Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of)	
)	CG Docket No. 02-278
Junk Fax Prevention Act 2005)	
)	CG Docket No. 05-338
Rules and Regulations Implementing the)	
Telephone Consumer Protection Act of 1991)	

COMMENTS OF CITY SELECT AUTO SALES, INC. ON THE PETITION FOR WAIVER OF CREDITSMARTS CORP.

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April 30, 2015

TABLE OF CONTENTS

Pag	e
EXECUTIVE SUMMARYi	ii
FACTUAL BACKGROUND	2
ARGUMENT	4
I. No good cause exists to grant the Creditsmarts petition because Petitioner knew that opt out notices were required, and thus is not "similarly situated" to other petitioners who were granted waivers	4
CONCLUSION	6

EXECUTIVE SUMMARY

On October 30, 2014, the Commission granted "retroactive waivers" of 47 C.F.R. § 64.1200(a)(4)(iv)—the regulation requiring opt-out notices on fax advertisements sent with "prior express invitation or permission"—to defendants in private TCPA actions and allowed "similarly situated" persons to seek waivers. The Commission stressed that "all future waiver requests will be adjudicated on a case-by-case basis" and that the Commission did not "prejudge the outcome of future waiver requests in the order." The petition by Creditsmarts Corp. ("Petitioner") requesting a similar retroactive waiver is one of numerous follow-on waiver petitions contemplated by the October 30 Order. The Commission should deny the petition.

No good cause exists here to grant Petitioner's request for a retroactive waiver. Petitioner is not "similarly situated" to other petitioners who were granted waivers. Undisputed evidence shows that Petitioner was not confused about whether a fax sent with the consent of the recipient was required to contain an optout notice. On the contrary, Petitioner has admitted in private litigation that it did know that it was required to include optout notices on solicited faxes, and it attempted to do so. The issue here is that the optout notice it included was not compliant. The waiver only applies to those who were confused about whether or not optout notices were required on faxes in the first place. Because Petitioner cannot in good faith claim that it was confused as to the legal requirement, Petitioners do not meet the requirements for a waiver.

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City Select Auto Sales, Inc. ("Plaintiff") is the plaintiff in a private TCPA action pending in the United States District Court for the District of New Jersey against petitioner Creditsmarts Corp. ("Creditsmarts," "Petitioner," or "Defendant"). Petitioner filed a petition on January 29, 2015, seeking a retroactive waiver of the regulation requiring an opt-out notice on fax advertisements sent with "the prior express consent or permission of the recipients or their agents."

The Commission issued an order on 24 similar petitions on October 30, 2014.³ That order rejected the challenges to the validity of the Commission's ability to promulgate and enact the opt-out regulation, but granted retroactive "waivers"

¹ See City Select Auto Sales, Inc. v. BMW Bank of North America, Inc., et al., No. 13-cv-04595-NLH-JS (D. N. J.) ("TCPA action.")

² Petition of Creditsmarts Corp. for Retroactive Waiver, CG Docket No. 02-278 Section CG Docket No. 05-338 (filed Jan. 29, 2015) (the "Surefire petition.")

³ In re Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005; Application for Review filed by Anda, Inc.; Petitions for Declaratory Ruling, Waiver, and/or Rulemaking Regarding the Commission's Opt-Out Requirement for Faxes Sent with the Recipient's Prior Express Permission, CG Docket Nos. 02-278, 05-338, Order, FCC 14-164 (rel. Oct. 30, 2014) ("Opt-Out Order").

purporting to relieve the 24 petitioners of liability in private TCPA litigation.⁴ The Opt-Out Order allowed other "similarly situated" parties to request waivers, and invited comments on those requests.⁵ Plaintiff requests the Commission deny Petitioners' request for a waiver because Petitioner knew it was required to place an opt-out notice on its solicited faxes, and did so, although the opt out notices were non-compliant. Accordingly, Petitioner is not "similarly situated" to others receiving waivers, and is not entitled to a waiver.

FACTUAL BACKGROUND

On July 30, 2013, Plaintiff filed two Class Action Complaints in the United States District Court for the District of New Jersey, challenging Petitioner's practice of faxing unsolicited advertisements in violation of the TCPA.⁶ One of those cases was settled individually, the other case is still pending. The complaint in the still-pending case alleges that Petitioner sent an unsolicited fax ad to Plaintiff on December 27, 2013.⁷ Plaintiff asserts that it did not invite or give permission to Petitioners, or anyone, to send the fax to it. Plaintiff alleges, on information and belief, that Petitioners sent fax advertisements to more than 39 other recipients without first receiving the recipients' "express permission or invitation." Plaintiff

⁴ Id. ¶¶ 19–20, 32 and n.70.

⁵ Consumer & Governmental Affairs Bureau Seeks Comment on Petitions Concerning the Commission's Rule on Opt-out Notices on Fax Advertisements, CG Docket Nos. 02-278, 05-338 (Nov. 28, 2014) ("Public Notice") ("With this Public Notice, we seek comment on the Petitions as described below. Specifically, the Petitioners seek retroactive waivers of the opt-out notice requirement for fax ads they sent where prior express invitation or permission had been obtained from the recipient").

⁶ See footnote 1, supra, and City Select Auto Sales, Inc., v. Creditsmarts Corp., No. 13-cv-04594-JHR-JS (D.N.J.).

⁷ A copy of the complaint is attached as Ex. 1. The fax at issue is at the end of Ex. 1, D.E. 1-2.

further alleges that the faxes do not contain the proper opt-out notice pursuant to the TCPA, as the faxes state only "To be removed from this list, please call 1-900-915-2571 ext 40410 or Fax this document back to 888-343-9903. Please be sure to include the number to be removed. Thank you."

Petitioner's president/owner, Sean Ryan, as well as the former employee who may have sent the faxes to Plaintiff, or caused them to be sent, Alex Gomez, have been deposed. In their testimony, neither Mr. Ryan nor Mr. Gomez claimed to have been confused about the requirement to include an opt-out notice in the advertisements they sent by fax. Neither claimed to have believed or misled into believing that the opt out notice requirement was less strict where recipients had given permission to receive the fax. Finally, there was no claim that Plaintiff specifically consented to receive the fax at issue. Rather, Petitioner claimed merely that Plaintiff had consented to receive Defendant's information by fax nearly a year earlier. Mr. Ryan testified that he did not know whether any persons to whom Defendant sent the fax at issue had specifically consented to receive that fax.8 Defendant regularly sends "product update" faxes to its clients, and the fax at issue in the Lawsuit was one of those updates.

There is no evidence that Defendant was "confused" about the opt out notice requirements under the TCPA. The faxes sent by Defendant contained opt out notices.⁹ The opt out notice was included to attempt to comply with applicable law.¹⁰

⁸ Dep. of Sean Ryan (17 Mar. 2014), Ex. 2 hereto, p. 55:1-5.

⁹ Ryan Dep., 118:18-22.

Mr. Gomez, whom Mr. Ryan testified had sent the fax, said that he "never really thought about" whether there were laws that governed fax advertising. ¹¹ Specifically, he had no recollection as to whether he ever knew or had training concerning the need to obtain consent or whether fax advertisements needed to have "opt out" language included. ¹²

On January 29, 2015, Petitioner filed its petition with the Commission. Petitioner bases its petition on the claim that it is similarly situated to other persons to whom waivers have been granted waivers because "Creditsmarts, like other companies, was reasonably confused as to whether Solicited Faxes must include an opt-out notice." ¹³

ARGUMENT

I. No good cause exists to grant the Creditsmarts petition because Petitioner knew that opt out notices were required, and thus is not "similarly situated" to other petitioners who were granted waivers.

In its Opt-Out Order, the Commission found that "good cause" existed to grant the 24 waivers because "some parties who have sent fax ads with the recipient's prior express permission may have reasonably been uncertain about whether our requirement for opt-out notices applied to them." An "inconsistency between a footnote contained in the *Junk Fax Order* and the rule caused confusion

¹⁰ Ryan Dep., 115:10-117:6.

¹¹ Dep. of Alejandro Gomez (19 May 2014), attached as Ex. 3, pp. 53:25-54:7

¹² Gomez Dep., 54:17-55:3.

¹³ Petition at 6.

¹⁴ Opt-Out Order, ¶1.

or misplaced confidence regarding the applicability of this requirement to faxes sent to those recipients who provided prior express permission."¹⁵ The Commission also permitted "similarly situated parties" to seek similar waivers.¹⁶

No good cause exists to grant the Creditsmarts petition because Creditsmarts by its own admission was not "confused" about the footnote, nor was Creditsmarts "uncertain" whether the opt out notice was required in its fax advertisements. The owner and president of Defendant, Sean Ryan, testified that opt out notices were included in the company's fax advertisements because he understood that was what the law required.¹⁷ There is no evidence that Defendant was "confused" or "uncertain" about the requirement to include an opt out notice. The only issue is whether the notice that was included was compliant.

Defendant's other witness, Alex Gomez, was not "confused" by the footnote either. He simply had no recollection of what the law required. His ignorance of the law does not amount to "confusion" over a specific footnote.

Petitioner asserts in conclusory fashion, with no evidentiary support, that it was "reasonably confused as to whether Solicited Faxes must include an opt-out notice." Petition, at 6. However, the admissions of Petitioner's president show that there was no such confusion. On the contrary, he believed that the law did require

 $^{^{15}}$ Opt-Out Order, $\P 24$.

¹⁶ Opt-Out Order, ¶2.

¹⁷ Ryan Dep., 115:10-117:6.

¹⁸ Gomez Dep., 53:25-55:3.

¹⁹ Petition at 6.

an opt out notice on all faxed advertisements.20 Accordingly, Petitioner is not "similarly situated" to any of the entities that received a waiver in the Opt-Out Order.

In the Opt-Out Order, the Commission noted that "nothing in the record here demonstrat[es] that the petitioners understood that they did, in fact, have to comply with the opt-out notice requirement . . . but nonetheless failed to do so."21 But here the record contains such evidence. First, the fax at issue did contain an opt out notice—albeit a non-compliant one. Second, the testimony of Sean Ryan establishes that he understood that the law required an opt-out notice. Accordingly, there is not grounds for a waiver here. Therefore, the petition should be denied.

CONCLUSION

The Commission should deny the Creditsmarts petition for waiver because Petitioners were not confused about the opt-out requirement, but rather knew of the requirement and included non-compliant opt-out notices on their faxed advertisements.

Respectfully submitted,

CITY SELECT AUTO SALES, INC.,

/s/ Jonathan B. Piper By:

> Phillip A. Bock Jonathan B. Piper BOCK & HATCH, LLC 134 N. La Salle St., Suite 1000

Chicago, Illinois 60602 Phone: 312.658.5500

²¹ Opt-Out Order, ¶¶25-26 (emphasis added).

6

²⁰ Ryan Dep., 115:10-117:6.

CERTIFICATE OF SERVICE

The undersigned attorney states that on April 30, 2015, he caused to be served a true and correct copy of the Comments of City Select Auto Sales, Inc. on the Petition for Waiver of Creditsmarts Corp. on the parties listed below by depositing the same in the U.S. mail at 134 N. La Salle St., Chicago IL 60602 with proper postage prepaid and addressed as follows:

William B. Hayes 257 Jackson St. Denver, CO 80206 Thomas J. Gaynor Smith & Doran, P.C. 60 Washington St. Morristown, NJ 07960

/s/ Jonathan B. Piper One of City Select Auto Sales, Inc.'s attorneys

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY – CAMDEN VICINAGE

CITY SELECT AUTO SALES, INC., a New Jersey corporation, individually and as the representative of a class of similarly situated persons,)))	
Plaintiff,)	
V.)	Case No.:
BMW BANK OF NORTH AMERICA,)	
INC., BMW FINANCIAL SERVICES NA,)	
LLC, CREDITSMARTS CORP., and)	
JOHN DOES 1-12,)	
)	
Defendants.)	
)	

CLASS ACTION COMPLAINT

Plaintiff, CITY SELECT AUTO SALES, INC. ("Plaintiff"), brings this action on behalf of itself and all other persons similarly situated, through its attorneys, and except as to those allegations pertaining to Plaintiff or its attorneys, which allegations are based upon personal knowledge, alleges the following upon information and belief against Defendants, BMW BANK OF NORTH AMERICA, INC., BMW FINANCIAL SERVICES NA, LLC, CREDITSMARTS CORP., and JOHN DOES 1-12 ("Defendants"):

PRELIMINARY STATEMENT

- 1. This case challenges Defendants' practice of faxing unsolicited advertisements.
- 2. The federal Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA"), prohibits a person or entity from faxing or having an agent send

unsolicited fax advertisements without the recipient's prior express invitation or permission. Moreover, the TCPA mandates that when a person or entity sends an advertisement by fax it must always include a very specific opt-out notice that is clearly and conspicuously included on the first page of the advertisement. See 47 U.S.C. § 227 (b) (2) (D); and 47 C.F.R. § 64.1200 (a) (4) (iii). The TCPA provides a private right of action and provides statutory damages of \$500 per violation, which may be trebled to \$1,500 per violation if the violation was willful.

- 3. Unsolicited faxes damage their recipients. A junk fax recipient loses the use of its fax machine, paper, and ink toner. An unsolicited fax wastes the recipient's valuable time that would have been spent on something else. A junk fax interrupts the recipient's privacy. Unsolicited faxes prevent fax machines from receiving authorized faxes, prevent their use for authorized outgoing faxes, cause undue wear and tear on the recipients' fax machines, and require additional labor to attempt to discern the source and purpose of the unsolicited message.
- 4. On behalf of itself and all others similarly situated, Plaintiff brings this case as a class action asserting claims against Defendants under the TCPA and the common law of conversion.
- 5. Plaintiff seeks an award of statutory damages for each violation of the TCPA.

PARTIES, JURISDICTION AND VENUE

6. Plaintiff is a New Jersey corporation with its principal place of business in Burlington, New Jersey.

- 7. Defendant, BMW Bank of North America, Inc. ("BMW Bank") is a Utah corporation with its principal place of business in Salt Lake City, Utah. BMW Bank sometimes does business as "Alphera Financial Services," or as "up2drive." "Alphera Financial Services" is a Utah registered dba of BMW Bank.
- 8. Defendant, BMW Financial Services NA, LLC ("BMW Financial") is a Delaware limited liability company.
 - 9. Defendant, Creditsmarts Corp. is a Delaware corporation.
- 10. Plaintiff sued defendants John Does 1-12 because it is not clear what additional entities or persons beyond the named Defendants actively participated in the transmission of the subject fax advertisement, or benefitted from its transmission.
- 11. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 47 U.S.C. § 227.
- 12. Venue is proper in the District of New Jersey because Defendants committed a statutory tort within this district and a significant portion of the events took place here.

FACTS

- 13. On or about December 27, 2012, Plaintiff received an unsolicited fax advertisement. Exhibit A, copy of the subject fax advertisement.
- 14. The subject fax advertises the goods, products or services of defendants BMW Bank, BMW Financial, and Creditsmarts Corp. Exhibit A. Defendants sent,

or caused, this unsolicited fax advertisement to be sent to Plaintiff and a class of similarly situated persons.

- 15. Plaintiff did not invite or give permission to any Defendant (or anyone else), to send Exhibit A to it.
- 16. The subject fax does not contain a clear and conspicuous opt-out notice. Instead, Defendants included an opt-out notice that was in tiny font located at the very bottom of the page. Exhibit A. Additionally, the opt-out notice did not include information that failure by Defendants to comply with an opt-out request within 30 days is unlawful as required by 47 C.F.R. § 64.1200 (a) (4) (iii) (B) and the TCPA.
- 17. On the face of Exhibit A, it is not understood whether the telephone and facsimile numbers identified in the notice were available to Plaintiff to make an opt-out request 24 hours a day, 7 days a week as required by 47 C.F.R. § 64.1200 (a) (4) (iii) (E).
- 18. On information and belief, Defendants sent the same facsimile to Plaintiff and more than 39 other recipients without first receiving the recipients' express permission or invitation. This is based, in part, on the fact that the fax is not addressed to anyone in particular, that Plaintiff never gave permission to anyone to send the subject fax advertisement to it, that Defendants are located in Utah and Delaware, and that sending advertisements by fax is a very inexpensive way to reach a wide audience.
- 19. There is no reasonable means for Plaintiff (or any other putative Class member) to avoid receiving illegal faxes. Fax machines are left on and ready to

receive the urgent communications their owners desire to receive.

CLASS REPRESENTATION ALLEGATIONS

- 20. This action is brought and may properly be maintained as a class action pursuant to Fed. R. Civ. P. 23. This action satisfies the numerosity, commonality, typicality, adequacy requirements under Rule 23 (a). Additionally, prosecution of Plaintiff's claims separately from the putative class's claims would create a risk of inconsistent or varying adjudications under Rule 23 (b) (1) (A). Furthermore, the questions of law or fact that are common in this action predominate over any individual questions of law or fact making class representation the superior method to adjudicate this controversy under Rule 23 (b) (3).
- 21. Plaintiff brings this action as a class action on behalf of itself and all others similarly situated as members of the Class, initially defined as follows:
 - All persons who were sent one or more telephone facsimile messages on or after four years prior to the filing of this action, that (1) advertised the commercial availability of property, goods, or services offered by "BMW Bank of North America", and (2) that did not contain an opt-out notice that complied with federal law.
- 22. Excluded from the Class are Defendants, any entity in which

 Defendants have a controlling interest, any officers or directors of Defendants, the

 legal representatives, heirs, successors, and assigns of Defendants, and any Judge

 assigned to this action, and his or her family.
- 23. <u>Numerosity/Impracticality of Joinder</u>: On information and belief, the Class consists of more than thirty-nine people and, thus, is so numerous that

joinder of all members is impracticable. The precise number of Class members and their addresses are unknown to Plaintiff, but can be obtained from Defendant's records or the records of third parties.

- 24. <u>Commonality and Predominance</u>: There is a well-defined community of interest and common questions of law and fact that predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from one Class member to another, and which may be determined without reference to the individual circumstances of any Class member, include, but are not limited to the following:
 - a. Whether Defendants sent fax advertisements;
 - b. Whether Exhibit A and similar faxes sent to the Class advertised the commercial availability of property, goods or services;
 - c. The manner and method Defendants used to compile or obtain the list of fax numbers to which they sent Exhibit A and other unsolicited fax advertisements;
 - d. Whether Defendants faxed advertisements without first obtaining the recipients' express permission or invitation;
 - e. Whether Defendants' opt-out notice complied with the TCPA and 47 C.F.R. § 64.1200 (a) (4) (iii) (B);
 - f. Whether Defendants' opt-out notice was clear and conspicuous;

- g. Whether Defendants' opt-out notice contained telephone and facsimile numbers that were available to Plaintiff and the other Class members 24 hours a day, 7 days a week;
- h. Whether each Defendant is, respectively, directly or vicariously liable for violating the TCPA;
- i. Whether Plaintiff and the other Class members are entitled to statutory damages;
- j. Whether Defendants should be enjoined from faxing advertisements in the future;
- k. Whether the Court should award enhanced damages because the TCPA violation was willful and/or knowing; and
- Whether Defendant's conduct as alleged herein constituted conversion.
- 25. Typicality of claims: Plaintiff's claims are typical of the claims of the Class because Plaintiff and all Class members were injured by the same wrongful practices. Plaintiff and the members of the Class are all individuals who received fax advertisements from Defendants that were unsolicited and/or did not contain the proper opt-out clause under the TCPA. Under the facts of this case, because the focus of the conduct is upon Defendants' conduct, if Plaintiff prevails on its claims, then the putative Class members must necessarily prevail as well.
- 26. <u>Adequacy of Representation</u>: Plaintiff is an adequate representative of the Class because its interests do not conflict with the interest of the members of

the Class it seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation and Plaintiff intends to vigorously prosecute this action. The interest of members of the Class will be fairly and adequately protected by Plaintiff and its counsel.

- 27. Prosecution of Separate Claims Would Yield Inconsistent Results:

 Even though the questions of fact and law in this action are predominately common to Plaintiff and the putative Class members, separate adjudication of each Class member's claims would yield inconsistent and varying adjudications. Such inconsistent rulings would create incompatible standards for Defendants to operate under if/when Class members bring additional lawsuits concerning the same unsolicited fax advertisements of if Defendants choose to advertise by fax again in the future.
- Questions of Law and Fact that Predominate: A class action is superior to other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. The likelihood of individual Class members prosecuting separate claims is remote, and even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Relief concerning Plaintiff's rights under the laws herein alleged and with respect to

the Class would be proper. Plaintiff envisions no difficulty in the management of this action as a class action.

COUNT I TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227

- 29. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.
- 30. Plaintiff brings Count I on behalf of itself and a class of similarly situated persons.
- 31. The TCPA prohibits the "use of any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine...." 47 U.S.C. § 227 (b) (1).
- 32. The TCPA defines "unsolicited advertisement," as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's express invitation or permission." 47 U.S.C. § 227 (a) (4).
 - 33. The TCPA provides:
 - 3. <u>Private right of action</u>. A person may, if otherwise permitted by the laws or rules of court of a state, bring in an appropriate court of that state:
 - (A) An action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,
 - (B) An action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

- (C) Both such actions.
- 34. The Court, in its discretion, can treble the statutory damages if the violation was knowing. 47 U.S.C. § 227.
- 35. In relevant part, the TCPA states that "[t]he Commission shall prescribe regulations to implement the requirements of this subsection . . . in implementing the requirements of this subsection, the Commission shall provide that a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if . . . (i) the notice is clear and conspicuous . . ." 47 U.S.C. § 227 (b) (2) (D) (i).
- 36. Additionally, "a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if . . . (ii) the notice states that the recipient may make a request to the sender of the unsolicited advertisement not to send any future unsolicited advertisements to a telephone facsimile machine or machines and that failure to comply, within the shortest reasonable time, as determined by the Commission, with such a request meeting the requirements under subparagraph (E) is unlawful . . ." 47 U.S.C. § 227 (b) (2) (D) (ii). The shortest reasonable time has been determined to be thirty (30) days. 47 C.F.R. § 64.1200 (a) (4) (iii) (B).
- 37. Moreover, "a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if . . . (v) the telephone and facsimile machine numbers and the cost-free mechanism . . . permit an individual or

business to make such a request at any time on any day of the week." 47 U.S.C. § 227 (b) (2) (D) (v).

- 38. Defendants violated 47 U.S.C. § 227 et seq. by sending advertisements by fax (Exhibit A) to Plaintiff and the other Class members without first obtaining their prior express invitation or permission.
- 39. Defendants violated 47 U.S.C. § 227 et seq. by not providing a clear and conspicuous opt-out notice. The notice that Defendants did include was in tiny font at the very bottom of the page. Exhibit A. Additionally, it is not clear whether Defendants provided telephone and facsimile numbers that allowed Plaintiff and the Class members to make an opt-out request at any time on any day of the week.
- 40. Defendants violated 47 U.S.C. § 227 et seq. by not including in the optout notice that Defendants were to comply with any optout request within thirty days, or their conduct would be considered unlawful.
- 41. Facsimile advertising imposes burdens on unwilling recipients that are distinct from the burden imposed by other types of advertising. The content of the required opt-out notice is designed to ensure that the recipients have the necessary contact information to opt-out of future fax transmissions. If senders do not clearly and conspicuously provide the opt-out content to the recipients, then the senders fail to enable the recipients with the appropriate information to stop the burdens imposed by this form of advertisement.
- 42. The TCPA is a strict liability statute and Defendants are liable to Plaintiff and the other Class members even if their actions were negligent.

- 43. Each Defendant is liable because, respectively, it sent the faxes, caused the faxes to be sent, participated in the activity giving rise to and/or constituting the violation, the faxes were sent on its behalf, and/or under general principles of vicarious liability applicable under the TCPA, including actual authority, apparent authority and ratification.
- 44. Moreover, Defendants are liable to Plaintiff and the other Class members under the TCPA for including an improper opt-out notice even if Defendants ultimately prove that they obtained prior express permission to send the advertisements by fax or prove that Defendants had an established business relationship with Plaintiff and the other Class members.
- 45. Defendants knew or should have known that Plaintiff and the other Class members had not given express invitation or permission for Defendants or anybody else to fax advertisements about Defendants' goods, products, or services, that Plaintiff and the other Class members did not have an established business relationship with Defendants, that Exhibit A is an advertisement, and that Exhibit A and the other advertisements Defendants sent did not display the proper opt-out notice as required by the TCPA.
- 46. Defendants' actions caused damages to Plaintiff and the other Class members. Receiving Defendants' junk faxes caused the recipients to lose paper and toner consumed in the printing of Defendants' faxes. Moreover, the subject faxes used Plaintiff's and the Class's fax machines. The subject fax cost Plaintiff time, as Plaintiff and his employees wasted their time receiving, reviewing and routing

Defendants' illegal faxes. That time otherwise would have been spent on Plaintiff's business activities. Defendants' faxes unlawfully interrupted Plaintiff's and the other Class members' privacy interests in being left alone. Finally, the injury and property damage sustained by Plaintiff and the other Class members from the sending of Exhibit A occurred outside Defendants' premises.

47. Even if Defendants did not intend to cause damage to Plaintiff and the other Class members, did not intend to violate their privacy, and did not intend to waste the recipients' valuable time with Defendants' advertisements, those facts are irrelevant because the TCPA is a strict liability statute.

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, demands judgment in its favor and against Defendants, jointly and severally as follows:

- A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Plaintiff as the representative of the class, and appoint Plaintiff's counsel as counsel for the class;
- B. That the Court award \$500.00-\$1,500.00 in damages for each violation of the TCPA;
- C. That the Court enter an injunction prohibiting Defendants from engaging in the statutory violations at issue in this action; and
- D. That the Court award costs and such further relief as the Court may deem just and proper.

COUNT II CONVERSION

- 48. Plaintiff incorporates paragraphs 1 through 28 as though fully set forth herein.
- 49. Plaintiff brings Count II on behalf of itself and a class of similarly situated persons.
- 50. By sending Plaintiff and the other Class members unsolicited faxes, Defendants improperly and unlawfully converted their fax machines, toner and paper to their own use. Defendants also converted Plaintiff's employees' time to their own use.
- 51. Immediately prior to the sending of the unsolicited faxes, Plaintiff and the other Class members owned an unqualified and immediate right to possession of their fax machines, paper, toner, and employee time.
- 52. By sending the unsolicited faxes, Defendants permanently misappropriated the Class members' fax machines, toner, paper, and employee time to their own use. Such misappropriation was wrongful and without authorization.
- 53. Defendants knew or should have known that its misappropriation of paper, toner, and employee time was wrongful and without authorization.
- 54. Plaintiff and the other Class members were deprived of the use of their fax machines, paper, toner, and employee time, which could no longer be used for any other purpose. Plaintiff and each Class member thereby suffered damages as a result of their receipt of unsolicited fax advertisements from Defendants.
- 55. Defendants' unsolicited fax effectively stole Plaintiff's employees' time because persons employed by Plaintiff were involved in receiving, routing, and

reviewing Defendants' illegal faxes. Defendants knew or should have known employees' time is valuable to Plaintiff.

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, demands judgment in its favor and against Defendants, jointly and severally as follows:

- A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Plaintiff as the representative of the class, and appoint Plaintiff's counsel as counsel for the class;
 - B. That the Court award appropriate damages;

- C. That the Court award costs of suit; and
- D. Awarding such further relief as the Court may deem just and proper.

Respectfully submitted,

CITY SELECT AUTO SALES, INC., a New Jersey corporation, individually and as the representative of a class of similarly-situated persons,

By:

One of its attorneys Alan C. Milstein

SHERMAN, SILVERSTEIN, KOHL, ROSE

& PODOLSKY, P.A.

East Gate Corporate Center 308 Harper Dr., Ste. 200 Moorestown, N 08057 Telephone: 856/662-0700

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

(a) SELECT AUTO SAI individually and as the rep persons			d	DEFENDANTS BMW BANK OF NO SERVICES NA, LLO 12	DRTH AMERICA, INC., C, CREDITSMARTS CO	BMW FINANCIAL DRP., and JOHN DOES 1-
(b) County of Residence of	First Listed Plaintiff Be	urlington, NJ		County of Residence	of First Listed Defendant (IN U.S. PLAINTIFF CASES O	Salt Lake City, Utah
,		,		NOTE: IN LAND CO	NDEMNATION CASES, USE TO OF LAND INVOLVED.	· ·
(c) Attorneys (Firm Name. A	Address. Email and Telephone N	(umbar)		Attorneys (If Kn		
(C) Automoys (Firm Name: 2	actress. Email and Telephone W	rumber)		Tutomoys (1) Kii	owny	
II. BASIS OF JURISDI	CTION (Place an "X" in O.	ne Box Onlyi	III. CI	TIZENSHIP OF PI	RINCIPAL PARTIES	(Place an "X" in One Box for Plaintiff
□ 1 U.S. Government	■ 3 Federal Question			(For Diversity Cases Only)		and One Box for Defendant) PTF DEF
Plaintiff	(U.S. Government N	lot a Party)	Citiz	en of This State		incipal Place 🔲 4 🗍 4
☐ 2 U.S. Government Defendant	☐ 4 Diversity (Indicate Citizenshi)	p of Parties in Item III)	Citiz	en of Another State	2	
				en or Subject of a preign Country	3	□ 6 □ 6
IV. NATURE OF SUIT			vales Lotters			
□ 110 Insurance	PERSONAL INJURY	RTS PERSONAL INJURY		ORFEITURE/PENALTY 25 Drug Related Seizure	BANKRUPTCY 422 Appeal 28 USC 158	OTHER STATUTES □ 375 False Claims Act
☐ 120 Marine ☐ 130 Miller Act	☐ 310 Airplane ☐ 315 Airplane Product	☐ 365 Personal Injury - Product Liability		of Property 21 USC 881 90 Other	☐ 423 Withdrawal 28 USC 157	☐ 400 State Reapportionment☐ 410 Antitrust
☐ 140 Negotiable Instrument	Liability	☐ 367 Health Care/		50 Other	L	☐ 430 Banks and Banking
□ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 320 Assault, Libel & Slander	Pharmaceutical Personal Injury			PROPERTY RIGHTS 820 Copyrights	☐ 450 Commerce ☐ 460 Deportation
☐ 151 Medicare Act	☐ 330 Federal Employers'	Product Liability			☐ 830 Patent	☐ 470 Racketeer Influenced and
☐ 152 Recovery of Defaulted Student Loans	Liability 340 Marine	☐ 368 Asbestos Personal Injury Product	•		☐ 840 Trademark	Corrupt Organizations 480 Consumer Credit
(Excludes Veterans) ☐ 153 Recovery of Overpayment	☐ 345 Marine Product Liability	Liability PERSONAL PROPER	7 O 7	LABOR	SOCIAL SECURITY 861 HIA (1395ff)	490 Cable/Sat TV
of Veteran's Benefits	350 Motor Vehicle	☐ 370 Other Fraud	11 5 /	Act	☐ 862 Black Lung (923)	☐ 850 Securities/Commodities/ Exchange
☐ 160 Stockholders' Suits ☐ 190 Other Contract	☐ 355 Motor Vehicle Product Liability	☐ 371 Truth in Lending ☐ 380 Other Personal	0 73	20 Labor/Management Relations	☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI	890 Other Statutory Actions
☐ 195 Contract Product Liability	☐ 360 Other Personal	Property Damage		40 Railway Labor Act	☐ 865 RSI (405(g))	☐ 891 Agricultural Acts ☐ 893 Environmental Matters
☐ 196 Franchise	Injury ☐ 362 Personal Injury -	☐ 385 Property Damage Product Liability	□ 7:	51 Family and Medical Leave Act		☐ 895 Freedom of Information
	Medical Malpractice	Product Liability		90 Other Labor Litigation		Act ☐ 896 Arbitration
REAL PROPERTY 210 Land Condemnation	☐ 440 Other Civil Rights	PRISONER PETITION	NS 0 7	91 Employee Retirement	FEDERAL TAX SUITS	☐ 899 Administrative Procedure
☐ 220 Foreclosure	440 Other Civil Rights 441 Voting	Habeas Corpus: ☐ 463 Alien Detainee		Income Security Act	☐ 870 Taxes (U.S. Plaintiff or Defendant)	Act/Review or Appeal of Agency Decision
☐ 230 Rent Lease & Ejectment	☐ 442 Employment	☐ 510 Motions to Vacate	;		☐ 871 IRS—Third Party	☐ 950 Constitutionality of
☐ 240 Torts to Land ☐ 245 Tort Product Liability	443 Housing/ Accommodations	Sentence 530 General			26 USC 7609	State Statutes
290 All Other Real Property	445 Amer. w/Disabilities -	☐ 535 Death Penalty		IMMIGRATION		
	Employment 446 Amer. w/Disabilities -	Other: 540 Mandamus & Oth		62 Naturalization Application 65 Other Immigration		
	Other	550 Civil Rights		Actions		1
	☐ 448 Education	☐ 555 Prison Condition ☐ 560 Civil Detainee -				
		Conditions of Confinement				
V. ORIGIN (Place an "X" is	n One Per Only)	Commement			1	
⊠ 1 Original □ 2 Re	moved from 3	Remanded from familiary Repellate Court		nstated or	r District Litigation	
		tute under which you a	re filing (Do not cite jurisdictional stat	utes unless diversity):	
VI. CAUSE OF ACTION		nuse: ne Consumer Prote	ection A	vct		
VII. REQUESTED IN COMPLAINT:	CHECK IF THIS UNDER RULE 2	IS A CLASS ACTION 3, F.R.Cv.P.	Exce	ess \$75,000.00	CHECK YES only JURY DEMAND	if demanded in complaint: :
VIII. RELATED CASI IF ANY	E(S) (See instructions):	JUDGE	2		DOCKET NUMBER	
DATE 07/30/2013		SIGNATURE OF AT	FORNEY	OF RECORD	 	
FOR OFFICE USE ONLY	(- And the	ar .	 	
RECEIPT#A	MOUNT	APPLYING IFP		JUDGE	MAG. JU	DGE

JS 44 Reverse (Rev. 12/12)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- **I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity
- III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin. Place an "X" in one of the six boxes.
 - Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

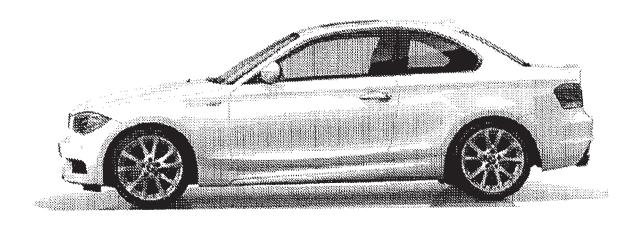
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date. Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

- VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.



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EXHIBIT 2

1					3
UNITED STATES DISTRICT COURT	1		INDEX		
DISTRICT OF NEW JERSEY - CAMDEN VICINAGE	2	EXA	MINATION	P.A	AGE
Case No. 13-cv-04595-NLH-JS	3		ch 17, 2014		
	4		Mr. Piper	5	
DEPOSITION OF SEAN RYAN	5	-	Mr. Garcia	212	
CITY SELECT AUTO SALES, INC., a	6	•	Mr. Hayes	225	
New Jersey corporation, individually	7	•	•	236	
and as the representative of a class of similarly situated persons,		-	Mr. Piper		DENIOE
	8		IIBITS	INITIAL REFE	RENCE
Plaintiff, vs.	9		INTIFF'S	_	
BMW BANK OF NORTH AMERICA, INC.,	10	1	Up2Drive Fax	6	
BMW FINANCIAL SERVICES NA, LLC,	11	2	WestFax Invoice	23	
CREDITSMARTS CORP., and JOHN DOES 1 - 12,	12	3	WestFax Payment Receip	t	24
·	13	4	8/2/2013 E-mail to Mr. Rya	an	24
Defendants.	14	5	8/8/2013 E-mail to Mr. Tho	ompson	25
	15	6	8/11/2013 E-mail to Mr. Th	nompson	29
March 17, 2014	16	7	8/12/13 E-mail to Mr. Ryar	n	37
10:00 a.m.	17	8	8/12/13 E-mail to Mr. Thor	mpson	39
10.00 (1.11.)	18	9	8/28/13 E-mail to Mr. Thor	•	44
PURSUANT TO NOTICE and the Federal Rules of Civil Procedure,	19	10	8/28/13 E-mail to Mr. Rya		46
the above-entitled deposition was taken on behalf of Plaintiff at 5150 East Yale Circle, Suite 200, Denver,	20	11	12/6/12 E-mail to Mr. Rya		47
Colorado, before Jessica R. Benson, Certified Shorthand	21	12	9/21/12 E-mail to Mr. Tho		52
Reporter and Notary Public within Colorado.	22	13	CreditSmarts Facebook L	•	63
	23	14	Up2Drive Finance Newsle		64
	24 25	15 16	BMW's Responses to Inte Plaintiff's Second Reques	-	80 n 82
2					4
		EVII	IDITO II	NITIAL DECEDE	
1 APPEARANCES: 2 For the Plaintiff:	1			NITIAL REFERE	INCE
JONATHAN B. PIPER	2		NTIFF'S	5 1 1	
Bock & Hatch, LLC	3	17	Plaintiff's First Requests for		85
134 N. La Salle Street, Suite 1000 4 Chicago, Illinois 60602	4	18	Up2Drive Logo	92	
(312)658-5500	5	19	Up2Drive Instructions	94	
5	6	20	WestFax Customer Agreem	ient	120
For the Defendant, CreditSmarts Corp. and the Witness:	7	21	"New and Improved" Fax	1;	32
6 WILLIAM B. HAYES Attorney at Law	8	22	BMW Financial Services Po	licy	140
7 257 Jackson Street	9	23	CSV File Snapshot	149	
Denver, Colorado 80206	10	24	AutoWebExperts Page	17	79
8 (303)514-0658	11	25	CreditSmarts.com FAQs	18	30
4 For the Detendante RMM Rank of North America Inc. and DMM		26	CreditSmarts.com Login	18	
9 For the Defendants, BMW Bank of North America, Inc. and BMW Financial Services NA, LLC:	12	-		193	
Financial Services NA, LLC:		27	City Select Data Entries		
Financial Services NA, LLC: 10 RAYMOND A. GARCIA Stroock & Stroock & Lavan LLP	13	27 DEF	City Select Data Entries	193	
Financial Services NA, LLC: 10 RAYMOND A. GARCIA Stroock & Stroock & Lavan LLP 11 180 Maiden Ln.	13 14	DEF	ENDANT'S		221
Financial Services NA, LLC: 10 RAYMOND A. GARCIA Stroock & Stroock & Lavan LLP 11 180 Maiden Ln. New York, New York 10038	13 14 15	DEF	ENDANT'S Master Professional Service	s Agreement	231
Financial Services NA, LLC: 10 RAYMOND A. GARCIA Stroock & Stroock & Lavan LLP 11 180 Maiden Ln. New York, New York 10038 12 (212)806-5400	13 14 15 16	DEF A B	ENDANT'S Master Professional Service Up2Drive Vendor Marketing	s Agreement Agreement	231 234
Financial Services NA, LLC: 10 RAYMOND A. GARCIA Stroock & Stroock & Lavan LLP 11 180 Maiden Ln. New York, New York 10038 12 (212)806-5400 13 14	13 14 15 16 17	DEF	ENDANT'S Master Professional Service	s Agreement	
Financial Services NA, LLC: 10 RAYMOND A. GARCIA	13 14 15 16 17 18	DEF A B	ENDANT'S Master Professional Service Up2Drive Vendor Marketing	s Agreement Agreement	
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Financial Services NA, LLC: 10 RAYMOND A. GARCIA	13 14 15 16 17 18	DEFI A B C	ENDANT'S Master Professional Service Up2Drive Vendor Marketing	s Agreement Agreement 236	234
Financial Services NA, LLC: 10 RAYMOND A. GARCIA	13 14 15 16 17 18 19	DEFI A B C	ENDANT'S Master Professional Service Up2Drive Vendor Marketing Affidavit of Sean Ryan	s Agreement Agreement 236	234
Financial Services NA, LLC: 10 RAYMOND A. GARCIA	13 14 15 16 17 18 19 20	DEFI A B C	ENDANT'S Master Professional Service Up2Drive Vendor Marketing Affidavit of Sean Ryan	s Agreement Agreement 236	234
Financial Services NA, LLC: 10 RAYMOND A. GARCIA	13 14 15 16 17 18 19 20 21	DEFI A B C	ENDANT'S Master Professional Service Up2Drive Vendor Marketing Affidavit of Sean Ryan	s Agreement Agreement 236	234
Financial Services NA, LLC: 10 RAYMOND A. GARCIA	13 14 15 16 17 18 19 20 21 22 23	DEFI A B C	ENDANT'S Master Professional Service Up2Drive Vendor Marketing Affidavit of Sean Ryan	s Agreement Agreement 236	234
Financial Services NA, LLC: 10 RAYMOND A. GARCIA Stroock & Stroock & Lavan LLP 11 180 Maiden Ln. New York, New York 10038 12 (212)806-5400 13 14 15 16 17 18 19 20 21 22	13 14 15 16 17 18 19 20 21 22	DEFI A B C	ENDANT'S Master Professional Service Up2Drive Vendor Marketing Affidavit of Sean Ryan	s Agreement Agreement 236	234

		1	
	5		7
1	PROCEEDINGS	1	A. The first week of August.
2	Sean Ryan,	2	Q. How did you learn that?
3	after having been duly sworn, testified as follows:	3	A. By Up2Drive folks said there was an
4	EXAMINATION	4	issue, and this lawsuit had had been filed.
5	BY MR. PIPER:	5	Q. Do you remember when you first learned
6	Q. Why don't you state your name for the	6	that from Up2Drive?
7	record, please?	7	A. First week, second week of August, 2013.
8	A. Sean Ryan.	8	Q. Do you specifically recall the
9	Q. And what's your current place of business?	9	communication where you learned that for the first
10	A. Riverside, California.	10	time?
11	Q. What's the address there?	11	A. No.
12	A. 5029 Lamart Drive, Riverside, California	12	Q. Do you recall whether it was a telephone
13	92507.	13	communication or e-mail?
14	Q. And what's your home address?	14	A. I believe there was an e-mail that said we
15	A. 19247 Hitching Post Place, Riverside,	15	have an issue.
16	California.	16	Q. Okay. So, to your best recollection, the
17	Q. And how are you employed?	17	first time you recall learning that there was an
18	A. By CreditSmarts Corporation.	18	issue about a fax that had been sent by CreditSmarts
19	Q. What's your position there?	19	was via an e-mail that was sent by somebody from
20	A. Acting manager, CEO, owner.	20	Up2Drive; is that correct?
21	Q. Have you ever been deposed before?	21	A. Correct. That, and that was confirmed by
22	A. No.	22	the court records when I pulled it on Pacer.
23	Q. Okay. Just to make it more efficient and	23	Q. So, who was it that you got that e-mail
24	for the court reporter's benefit, you should speak	24	from?
25	up and clearly so she can take it down and give	25	A. Jake Thomas Thompson.
	6		8
1	•	1	_
1	verbal word answers as opposed to uh-huh or huh-uh.	1	THE WITNESS: Thompson.
2	verbal word answers as opposed to uh-huh or huh-uh. And if you feel that you don't understand a question	2	THE WITNESS: Thompson. MR. GARCIA: Thompson.
2	verbal word answers as opposed to uh-huh or huh-uh. And if you feel that you don't understand a question or it's subject to different meanings, feel free to	2 3	THE WITNESS: Thompson. MR. GARCIA: Thompson. Q. (BY MR. PIPER) And after you you got an
2 3 4	verbal word answers as opposed to uh-huh or huh-uh. And if you feel that you don't understand a question or it's subject to different meanings, feel free to ask me to rephrase it; and I'll try to make it	2 3 4	THE WITNESS: Thompson. MR. GARCIA: Thompson. Q. (BY MR. PIPER) And after you you got an e-mail from him, what did you do once you got that
2 3 4 5	verbal word answers as opposed to uh-huh or huh-uh. And if you feel that you don't understand a question or it's subject to different meanings, feel free to ask me to rephrase it; and I'll try to make it clearer for you.	2 3 4 5	THE WITNESS: Thompson. MR. GARCIA: Thompson. Q. (BY MR. PIPER) And after you you got an e-mail from him, what did you do once you got that e-mail? What was the next thing you did?
2 3 4	verbal word answers as opposed to uh-huh or huh-uh. And if you feel that you don't understand a question or it's subject to different meanings, feel free to ask me to rephrase it; and I'll try to make it clearer for you. A. Okay.	2 3 4 5 6	THE WITNESS: Thompson. MR. GARCIA: Thompson. Q. (BY MR. PIPER) And after you you got an e-mail from him, what did you do once you got that e-mail? What was the next thing you did? A. I asked an employee of CreditSmarts if
2 3 4 5 6 7	verbal word answers as opposed to uh-huh or huh-uh. And if you feel that you don't understand a question or it's subject to different meanings, feel free to ask me to rephrase it; and I'll try to make it clearer for you. A. Okay. MR. PIPER: If we could mark the first	2 3 4 5	THE WITNESS: Thompson. MR. GARCIA: Thompson. Q. (BY MR. PIPER) And after you you got an e-mail from him, what did you do once you got that e-mail? What was the next thing you did? A. I asked an employee of CreditSmarts if this was generated.
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2 3 4 5 6 7 8	verbal word answers as opposed to uh-huh or huh-uh. And if you feel that you don't understand a question or it's subject to different meanings, feel free to ask me to rephrase it; and I'll try to make it clearer for you. A. Okay. MR. PIPER: If we could mark the first exhibit, please.	2 3 4 5 6 7 8	THE WITNESS: Thompson. MR. GARCIA: Thompson. Q. (BY MR. PIPER) And after you you got an e-mail from him, what did you do once you got that e-mail? What was the next thing you did? A. I asked an employee of CreditSmarts if this was generated. Q. Okay. Who was the employee you asked? A. Alex Gomez. Q. And between the time that you got the
2 3 4 5 6 7 8 9	verbal word answers as opposed to uh-huh or huh-uh. And if you feel that you don't understand a question or it's subject to different meanings, feel free to ask me to rephrase it; and I'll try to make it clearer for you. A. Okay. MR. PIPER: If we could mark the first exhibit, please. (Deposition Exhibit 1 was marked.) Q. (BY MR. PIPER) Do you recognize this	2 3 4 5 6 7 8 9	THE WITNESS: Thompson. MR. GARCIA: Thompson. Q. (BY MR. PIPER) And after you you got an e-mail from him, what did you do once you got that e-mail? What was the next thing you did? A. I asked an employee of CreditSmarts if this was generated. Q. Okay. Who was the employee you asked? A. Alex Gomez.
2 3 4 5 6 7 8 9 10	verbal word answers as opposed to uh-huh or huh-uh. And if you feel that you don't understand a question or it's subject to different meanings, feel free to ask me to rephrase it; and I'll try to make it clearer for you. A. Okay. MR. PIPER: If we could mark the first exhibit, please. (Deposition Exhibit 1 was marked.) Q. (BY MR. PIPER) Do you recognize this document, sir?	2 3 4 5 6 7 8 9 10	THE WITNESS: Thompson. MR. GARCIA: Thompson. Q. (BY MR. PIPER) And after you you got an e-mail from him, what did you do once you got that e-mail? What was the next thing you did? A. I asked an employee of CreditSmarts if this was generated. Q. Okay. Who was the employee you asked? A. Alex Gomez. Q. And between the time that you got the e-mail and when you talked to Mr. Gomez, had you
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2 3 4 5 6 7 8 9 10 11 12 13	verbal word answers as opposed to uh-huh or huh-uh. And if you feel that you don't understand a question or it's subject to different meanings, feel free to ask me to rephrase it; and I'll try to make it clearer for you. A. Okay. MR. PIPER: If we could mark the first exhibit, please. (Deposition Exhibit 1 was marked.) Q. (BY MR. PIPER) Do you recognize this document, sir? A. Yes. Q. What is this document?	2 3 4 5 6 7 8 9 10 11 12 13	THE WITNESS: Thompson. MR. GARCIA: Thompson. Q. (BY MR. PIPER) And after you you got an e-mail from him, what did you do once you got that e-mail? What was the next thing you did? A. I asked an employee of CreditSmarts if this was generated. Q. Okay. Who was the employee you asked? A. Alex Gomez. Q. And between the time that you got the e-mail and when you talked to Mr. Gomez, had you gone to Pacer in the meantime? A. Yes, I believe.
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	9		11
1	Q. Okay. So, at about the same time you got	1	Mr. Gomez. What did you say to him?
2	an e-mail from BMW and you got a solicitation from a	2	A. What do you mean?
3	law firm?	3	Q. Well, when you went to Mr. Gomez with the
4	A. Correct.	4	fax first of all, did you have a physical
5	Q. What law firm was that?	5	face-to-face discussion with him about the fax?
6	A. Gibbons.	6	A. No.
7	Q. And how did you get solicited by them?	7	Q. What did you do? Did you e-mail it to
8	A. By mail.	8	him, or how did you communicate with him?
9	Q. At the time you went to Pacer, had you	9	A. I asked if he sent this and I sent him an
10	spoken to anybody at the Gibbons law firm?	10	e-mail and he responded back and I forwarded it to
11	A. No.	11	Jake.
12	Q. So, at the time you looked on Pacer, all	12	Q. So, were you in the same office location
13	you knew was that there was an e-mail from	13	with Mr. Gomez?
14	Mr. Thompson and a letter from the Gibbons law firm;	14	A. Yes.
15	is that	15	Q. But you had your communication with him by
16	A. Correct.	16	e-mail about the fax?
17	Q. And, so, you pulled the complaint off	17	A. Correct.
18	Pacer and saw	18	Q. Okay. What did he what did you say to
19	A. Well, the letter had the complaint in it.	19	him in the e-mail you sent him as best you recall?
20	Q. The letter had the complaint?	20	A. I think you have it.
21	A. Uh-huh.	21	Q. I don't to my knowledge.
22	Q. What were you looking for additionally on	22	So, what did you say to him as best
23	Pacer then?	23	you recall in the e-mail?
24	A. To confirm that this was real.	24	A. Did you send a fax?
25	Q. That it had actually been filed?	25	Q. And did you attach the fax?
	10		12
1	A. Correct.	1	A. No.
2	Q. Okay. So, once you confirmed that the	2	Q. Okay. And what did he say to you?
3	case had actually been filed and you and you	3	A. He sent back this image.
4	had a physical copy of the facts that was attached	4	Q. Okay. And did he say anything about it?
5	to the complaint that came from the Gibbons firm; is	5	A. No.
6	that correct?	6	Q. Did he tell you the circumstances in which
7	A. Correct.	7	he had sent it at that point?
8	Q. And then the next thing you did was to	8	A. No.
9	talk to Alex Gomez; is that correct?	9	Q. Okay. And what was the next thing that
10	A. Correct.	10	you did once Mr. Gomez sent you an e-mail saying
11	Q. Who was Alex Gomez?	11	that this was the fax or attaching this fax?
12	A. He is an employee of CreditSmarts, or was.	12	A. I called the CreditSmarts customer in
13	Q. And what was his position back in August	13	question, City Select.
14	of 2013?	14	Q. Okay. And what did you say to City
15	A. Officer manager.	15	Select?
16	Q. And why was he the person that you first	16	A. I asked them what this was about.
17	contacted to ask about the fax?	17	Q. Who did you talk to at City Select?
18	A. He would have been the he's the office	18	A. Lou Pelligrini.
19	manager.	19	Q. And what did you ask Mr. Pelligrini?
	Q. Okay. But what do his duties have to do	20	A. What this fax what the lawsuit was
20		21	about and why he was doing it.
	with faxing?		
20	with faxing? A. He manages or managed the office staff.	22	Q. And what did he tell you?
20 21	5	22 23	Q. And what did he tell you?A. Fuck off and die.
20 21 22	A. He manages or managed the office staff.		

	13		15
1	Q. And was there anything else to that	1	fax by e-mail in response to an e-mail you had sent
2	conversation?	2	him, did you ever have any discussions with Alex
3	A. No.	3	Gomez about this fax?
4	Q. And then what did you do after that	4	A. Not other than what is it and where did
5	discussion with Mr. Pelligrini?	5	you get the imaging.
6	A. I contracted Gibbons; and I called you,	6	Q. Okay. When did you have that discussion
7	didn't I?	7	with him?
8	Q. Okay. So	8	A. That same week.
9	A. I think I called you, and I called your	9	Q. Was that face to face or by e-mail?
10	partner in New Jersey.	10	A. Yes.
11	Q. Mr. Milstein?	11	Q. So, when you had a face-to-face discussion
12	A. Uh-huh. A very nice man. He said that	12	with Mr. Gomez sometime in early August of 2013,
13	they weren't interested in CreditSmarts, that they	13	what was the general subject of that discussion?
14	were only interested in going after our insurance	14	A. Where did you get the BMW logo which we
15	product and BMW. His words.	15	don't store CreditSmarts does not store, and when
16	Q. That was Mr. Milstein?	16	did this go out?
17	A. Correct.	17	Q. What did he tell you about when this went
18	Q. Now, when you spoke to	18	out?
19	A. And I spoke to Phillip Bock who reiterated	19	A. The date is on on the the document.
20	the same thing. He said not to worry, everything	20	That was the extent of his memory.
21	would be fine, hand over your insurance policy.	21	Q. So, he confirmed that it went out about
22	Q. When did you speak to me? Was that around	22	the date that it shows on the document?
23	the same time?	23	A. Correct.
24	A. Around the same time.	24	Q. And what did he tell you about where he
25	Q. What did I say to you in the phone call?	25	got the logo?
			40
	14		16
1	A. I believe you asked for the insurance	1	A. He said he didn't remember but most likely
2	coverage.	2	the Internet.
3	Q. Okay. Do you recall whether I asked you	3	Q. And did you have any discussion with him
4	if you had an attorney?	4	about why he had sent it?
5	A. Yes.	5	A. Yes.
6	Q. And do you recall that I told you I wasn't	6	Q. What did he say in response to that?
7	really comfortable talking to you	7	A. Program update to our to CreditSmarts'
8	A. Correct.	8	customers.
9	Q and that I would rather that you talk	9	Q. What is a program update?
10	to an attorney and have them call me?	10	A. CreditSmarts has a list of 31,000 auto
11	A. Correct. And that's when I retained,	11	dealerships that have registered to receive
12	after the fact, Gibbons.	12	information regarding finance programs and
13	Q. Okay. Is it your understanding that	13	compliance.
14	Exhibit 1 is an advertisement?	14	Q. And what is a program update?
15 16	A. No.	15 16	A. A program update would be guidelines, max miles, loan to value, things that are that an
17	Q. Okay. What did you understand well, at some point did Mr. Gomez tell you any facts and	17	auto dealership needs to know when discussing
18	circumstances surrounding the faxing of Exhibit 1?	18	finance options with their customers.
19	A. No.	19	Q. So, what was this fax, to your
20	Q. Did you ever interview him to find out why	20	understanding, supposed to update
	he had sent this well, did you ever find out who	21	A. I wouldn't know.
21	THE THEO SELECTION WELL, AND YOU EVEL THEO OUT WITH	""	
21		2.2	Q dealerships about?
22	had sent this fax?	22	Q dealerships about? A. I wouldn't know. I didn't generate the
22 23	had sent this fax? A. Assuming that it would be Alex if it	23	A. I wouldn't know. I didn't generate the
22	had sent this fax?		

	17		19
1	was updating?	1	A. CreditSmarts' customers.
2	A. I would expect that it has 2006 vehicles	2	Q. And would that have been sent to all the
3	and newer, loan to value, and miles.	3	CreditSmarts' customers typically?
4	Q. Okay.	4	A. I don't have that knowledge.
5	MR. HAYES: Can we go off the record for a	5	Q. How often did CreditSmarts do program
6	second?	6	updates in 2013?
7	MR. PIPER: Sure.	7	A. I don't have that knowledge.
8	(Recess taken.)	8	Q. Who was responsible for sending program
9	Q. (BY MR. PIPER) Was there anything you	9	updates for CreditSmarts?
10	wanted to add to your testimony?	10	A. Alex Gomez.
11	A. I would not have a clue.	11	Q. Did you ever give him any instructions
12	Q. Okay.	12	about sending program updates?
13	MR. PIPER: And, for the record, Mr. Ryan	13	A. No.
14	has at various points been sort of checking off	14	Q. So, was it simply in his discretion to
15	various lines on Exhibit 1. So, there are dashes	15	send program updates as he saw fit?
16	now next to BMW Bank of North America, Up2Drive and	16	A. Generally speaking.
17	110 percent	17	Q. Is Mr. Gomez still employed by
18	A. I'll make a clean copy.	18	CreditSmarts?
19	MR. PIPER: 2006, and up to	19	A. No.
20	90,000 miles.	20	Q. When did he stop being employed by
21	Q. (BY MR. PIPER) And I don't really care if	21	CreditSmarts?
22	you write on the document if it helps you to	22	A. October of 2013.
23	testify, but I just want the record to be clear that	23	Q. And why did he leave CreditSmarts?
24	there's some markings that have been made.	24	A. He resigned.
25	So, did Mr well, when Mr. Gomez	25	Q. Did he tell you why he was resigning?
	18		20
1	told you this was a program update, did you	1	A. No.
2	understand what he meant; or did you have an	2	Q. Did it have anything to do, to your
3	understanding of what he meant by program update?	3	knowledge, with this fax?
4	A. Yes.	4	A. Yes.
5	Q. And what did you understand when Mr. Gomez	5	MR. GARCIA: Objection.
6	told you that this was a program update?	6	Q. (BY MR. PIPER) Why do you say that his
7	A. Please elaborate.	7	resignation had something to do with this fax?
8	Q. Well, I just asked you when he told you	8	A. Because CreditSmarts by this action is
9	this was a program update, did you understand what	9	under financial duress.
10	he meant by that; and, now, I'm and you said you	10	Q. And how did that lead to Mr. Gomez
11	did.	11	resigning his position?
12	So, I'm now asking you even though	12	A. I would think that would be subjective. I
13	you're not the guy that created the fax, once he	13	don't know his exact reasons. I would surmise he's
14	told you this was a program update, what did you	14	worked with CreditSmarts for a while.
15	understand he meant by program update?	15	MR. HAYES: Jon, may we go off the record
16	A. An informational update.	16	again? May
17	Q. And the information would be the	17	MR. PIPER: I don't mind your helping him
18	information that's contained on the fax; is that	18	to
19	correct?	19	MR. HAYES: I'm not helping him. I'm just
20	A. Correct.	20	asking him not to guess because I'm impatient, and I
21	Q. Okay. Did you ask Mr. Gomez who he sent	21	want to get out of here.
22	the program update to?	22	THE WITNESS: Okay.
23	A. No.	23	MR. HAYES: So, if you know something,
24	Q. Did you have a typical audience to which	24	Sean
25	you sent your program updates to?	25	A. I don't know.
			A CONTRACTOR OF THE PROPERTY O

	21		23
1	MR. HAYES: Again, thank you. And I	1	Q. Other than what you've discussed
2	apologize if you think I'm helping him. Let's go	2	previously
3	back on the record.	3	A. No.
4	MR. PIPER: I think we were on the record.	4	Q did you have any follow-up e-mails?
5	I don't mean by helping him I don't mean coaching	5	A. No.
6	him, which I don't think you're doing. I think	6	MR. HAYES: Please let Jon finish his
7	but if you want to speak out loud to the witness, I	7	questions and then you answer because she has two
8	just assume that you do that	8	hands, and it's difficult to
9	A. Let's be frank.	9	THE WITNESS: I understand.
10	MR. PIPER: on the record. If you want	10	MR. PIPER: Can we mark this as the next
11	to take a break and talk to him in private	11	exhibit?
12	A. Your actions put this company under	12	(Deposition Exhibit 2 was marked.)
13	financial duress, and as a result I think he	13	Q. (BY MR. PIPER) Do you recognize this
14	understood CreditSmarts did not have the financial	14	document, Mr. Ryan?
15	resources to continue his employ.	15	A. Yes.
16	Q. (BY MR. PIPER) Okay. Had he had his	16	Q. What is this document?
17	salary cut before October, 2013?	17	A. This is an invoice that I requested from
18	A. No.	18	WestFax several months ago.
19	Q. Had you talked to him about the fact that	19	Q. And, to your understanding, what is this
20	the company was under duress?	20	an invoice for?
21	A. Yes.	21	A. For a fax service.
22	Q. Before okay. So, did his resignation	22	Q. Do you know what the fax was that was
23	have anything did you well, when did you first	23	being billed for here?
24	discuss with Mr. Gomez the possibility of his	24	A. By date it would be the fax in Exhibit 1.
25	leaving the company because of this fax?	25	Q. And was this paid for by CreditSmarts?
	22		24
1	A. The day he resigned.	1	A. Yes.
2	Q. Had you ever talked to him about that	2	MR. PIPER: Let's mark this as the next
3	prior to the day he resigned?	3	exhibit, please.
4	A. No.	4	(Deposition Exhibit 3 was marked.)
5	Q. Had you ever asked for his resignation as	5	Q. (BY MR. PIPER) Do you recognize this
6	a result of the fact that he had sent this fax?	6	document?
7	A. No.	7	۸ ٧٠٠
0			A. Yes.
8	 Q. Had he ever told you that he was willing 	8	Q. And what is this document?
9	Q. Had he ever told you that he was willing to resign because of this fax before that day?	8 9	
	· ·		Q. And what is this document?
9	to resign because of this fax before that day?	9	Q. And what is this document?A. A receipt.
9	to resign because of this fax before that day? A. No.	9	Q. And what is this document?A. A receipt.Q. And is that a receipt for the same fax
9 10 11	to resign because of this fax before that day? A. No. Q. Do you have any knowledge about the	9 10 11	Q. And what is this document?A. A receipt.Q. And is that a receipt for the same fax that's reflected in Exhibit 2?
9 10 11 12	to resign because of this fax before that day? A. No. Q. Do you have any knowledge about the sending of this fax by CreditSmarts other than your	9 10 11 12	Q. And what is this document?A. A receipt.Q. And is that a receipt for the same fax that's reflected in Exhibit 2?A. Yes.
9 10 11 12 13	to resign because of this fax before that day? A. No. Q. Do you have any knowledge about the sending of this fax by CreditSmarts other than your discussions with Mr. Gomez? A. No. Q. Did you ever have any discussions with BMW	9 10 11 12 13	 Q. And what is this document? A. A receipt. Q. And is that a receipt for the same fax that's reflected in Exhibit 2? A. Yes. MR. PIPER: Can we mark this as the next
9 10 11 12 13 14	to resign because of this fax before that day? A. No. Q. Do you have any knowledge about the sending of this fax by CreditSmarts other than your discussions with Mr. Gomez? A. No. Q. Did you ever have any discussions with BMW about Mr. Gomez leaving CreditSmarts?	9 10 11 12 13 14	 Q. And what is this document? A. A receipt. Q. And is that a receipt for the same fax that's reflected in Exhibit 2? A. Yes. MR. PIPER: Can we mark this as the next exhibit?
9 10 11 12 13 14 15	to resign because of this fax before that day? A. No. Q. Do you have any knowledge about the sending of this fax by CreditSmarts other than your discussions with Mr. Gomez? A. No. Q. Did you ever have any discussions with BMW about Mr. Gomez leaving CreditSmarts? A. No.	9 10 11 12 13 14 15	 Q. And what is this document? A. A receipt. Q. And is that a receipt for the same fax that's reflected in Exhibit 2? A. Yes. MR. PIPER: Can we mark this as the next exhibit? (Deposition Exhibit 4 was marked.) Q. (BY MR. PIPER) Do you recognize this e-mail?
9 10 11 12 13 14 15 16 17	to resign because of this fax before that day? A. No. Q. Do you have any knowledge about the sending of this fax by CreditSmarts other than your discussions with Mr. Gomez? A. No. Q. Did you ever have any discussions with BMW about Mr. Gomez leaving CreditSmarts? A. No. Q. Once you learned that there was a lawsuit	9 10 11 12 13 14 15 16 17	 Q. And what is this document? A. A receipt. Q. And is that a receipt for the same fax that's reflected in Exhibit 2? A. Yes. MR. PIPER: Can we mark this as the next exhibit? (Deposition Exhibit 4 was marked.) Q. (BY MR. PIPER) Do you recognize this e-mail? A. Yes.
9 10 11 12 13 14 15 16 17 18	to resign because of this fax before that day? A. No. Q. Do you have any knowledge about the sending of this fax by CreditSmarts other than your discussions with Mr. Gomez? A. No. Q. Did you ever have any discussions with BMW about Mr. Gomez leaving CreditSmarts? A. No. Q. Once you learned that there was a lawsuit about this fax, did you have any further	9 10 11 12 13 14 15 16 17 18	Q. And what is this document? A. A receipt. Q. And is that a receipt for the same fax that's reflected in Exhibit 2? A. Yes. MR. PIPER: Can we mark this as the next exhibit? (Deposition Exhibit 4 was marked.) Q. (BY MR. PIPER) Do you recognize this e-mail? A. Yes. Q. And is that the e-mail you referenced
9 10 11 12 13 14 15 16 17 18 19 20	to resign because of this fax before that day? A. No. Q. Do you have any knowledge about the sending of this fax by CreditSmarts other than your discussions with Mr. Gomez? A. No. Q. Did you ever have any discussions with BMW about Mr. Gomez leaving CreditSmarts? A. No. Q. Once you learned that there was a lawsuit about this fax, did you have any further communications with BMW about the fax?	9 10 11 12 13 14 15 16 17 18 19 20	Q. And what is this document? A. A receipt. Q. And is that a receipt for the same fax that's reflected in Exhibit 2? A. Yes. MR. PIPER: Can we mark this as the next exhibit? (Deposition Exhibit 4 was marked.) Q. (BY MR. PIPER) Do you recognize this e-mail? A. Yes. Q. And is that the e-mail you referenced earlier where well, I'm sorry.
9 10 11 12 13 14 15 16 17 18 19 20 21	to resign because of this fax before that day? A. No. Q. Do you have any knowledge about the sending of this fax by CreditSmarts other than your discussions with Mr. Gomez? A. No. Q. Did you ever have any discussions with BMW about Mr. Gomez leaving CreditSmarts? A. No. Q. Once you learned that there was a lawsuit about this fax, did you have any further communications with BMW about the fax? A. No.	9 10 11 12 13 14 15 16 17 18 19 20 21	Q. And what is this document? A. A receipt. Q. And is that a receipt for the same fax that's reflected in Exhibit 2? A. Yes. MR. PIPER: Can we mark this as the next exhibit? (Deposition Exhibit 4 was marked.) Q. (BY MR. PIPER) Do you recognize this e-mail? A. Yes. Q. And is that the e-mail you referenced earlier where well, I'm sorry. What is this e-mail?
9 10 11 12 13 14 15 16 17 18 19 20 21 22	to resign because of this fax before that day? A. No. Q. Do you have any knowledge about the sending of this fax by CreditSmarts other than your discussions with Mr. Gomez? A. No. Q. Did you ever have any discussions with BMW about Mr. Gomez leaving CreditSmarts? A. No. Q. Once you learned that there was a lawsuit about this fax, did you have any further communications with BMW about the fax? A. No. Q. Did you exchange e-mails with Jake	9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. And what is this document? A. A receipt. Q. And is that a receipt for the same fax that's reflected in Exhibit 2? A. Yes. MR. PIPER: Can we mark this as the next exhibit? (Deposition Exhibit 4 was marked.) Q. (BY MR. PIPER) Do you recognize this e-mail? A. Yes. Q. And is that the e-mail you referenced earlier where well, I'm sorry. What is this e-mail? A. Request for copy of an agreement.
9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	to resign because of this fax before that day? A. No. Q. Do you have any knowledge about the sending of this fax by CreditSmarts other than your discussions with Mr. Gomez? A. No. Q. Did you ever have any discussions with BMW about Mr. Gomez leaving CreditSmarts? A. No. Q. Once you learned that there was a lawsuit about this fax, did you have any further communications with BMW about the fax? A. No. Q. Did you exchange e-mails with Jake Thompson about the fact that this fax had been sent	9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. And what is this document? A. A receipt. Q. And is that a receipt for the same fax that's reflected in Exhibit 2? A. Yes. MR. PIPER: Can we mark this as the next exhibit? (Deposition Exhibit 4 was marked.) Q. (BY MR. PIPER) Do you recognize this e-mail? A. Yes. Q. And is that the e-mail you referenced earlier where well, I'm sorry. What is this e-mail? A. Request for copy of an agreement. Q. At the point that you got do you recall
9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	to resign because of this fax before that day? A. No. Q. Do you have any knowledge about the sending of this fax by CreditSmarts other than your discussions with Mr. Gomez? A. No. Q. Did you ever have any discussions with BMW about Mr. Gomez leaving CreditSmarts? A. No. Q. Once you learned that there was a lawsuit about this fax, did you have any further communications with BMW about the fax? A. No. Q. Did you exchange e-mails with Jake Thompson about the fact that this fax had been sent or an explanation of why the fax was sent?	9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q. And what is this document? A. A receipt. Q. And is that a receipt for the same fax that's reflected in Exhibit 2? A. Yes. MR. PIPER: Can we mark this as the next exhibit? (Deposition Exhibit 4 was marked.) Q. (BY MR. PIPER) Do you recognize this e-mail? A. Yes. Q. And is that the e-mail you referenced earlier where well, I'm sorry. What is this e-mail? A. Request for copy of an agreement. Q. At the point that you got do you recall receiving this e-mail?
9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	to resign because of this fax before that day? A. No. Q. Do you have any knowledge about the sending of this fax by CreditSmarts other than your discussions with Mr. Gomez? A. No. Q. Did you ever have any discussions with BMW about Mr. Gomez leaving CreditSmarts? A. No. Q. Once you learned that there was a lawsuit about this fax, did you have any further communications with BMW about the fax? A. No. Q. Did you exchange e-mails with Jake Thompson about the fact that this fax had been sent	9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. And what is this document? A. A receipt. Q. And is that a receipt for the same fax that's reflected in Exhibit 2? A. Yes. MR. PIPER: Can we mark this as the next exhibit? (Deposition Exhibit 4 was marked.) Q. (BY MR. PIPER) Do you recognize this e-mail? A. Yes. Q. And is that the e-mail you referenced earlier where well, I'm sorry. What is this e-mail? A. Request for copy of an agreement. Q. At the point that you got do you recall

	25		27
1	Q. And at the point when you received this	1	need to do that. I'm not trying to
2	e-mail, did you know there was an issue about a fax?	2	MR. HAYES: They're there right now.
3	A. I don't recall.	3	MR. PIPER: I got them now, yes. So,
4	Q. Okay. Had you had any discussions with	4	hopefully the one thing that's significant that I
5	Mr. Thompson before receiving this e-mail about any	5	don't believe I have is if there's e-mails between
6	issues about a fax?	6	Mr. Ryan and Mr. Gomez in this period about the fax.
7	A. Prior to August?	7	It seems to me that would be relevant.
8	Q. Prior to getting this e-mail on	8	MR. HAYES: Then you should ask Mr. Ryan
9	August 7th.	9	whether there are or aren't.
10	A. I don't recall whether it was before or	10	Q. (BY MR. PIPER) Do you know if you still
11	after.	11	have copies of those e-mails you sent to Mr. Gomez
12	Q. Okay. Did you have any understanding of	12	back then?
13	why he was asking for the Master Services Agreement	13	A. One e-mail, yes.
14	at that time?	14	Q. And his response to you, would you have
15	A. I don't recall.	15	that as well?
16	MR. PIPER: If you could mark this as the	16	A. His response to me is that document.
17	next exhibit.	17	Q. Okay. But he e-mailed you the document?
18	(Deposition Exhibit 5 was marked.)	18	A. Exhibit 1. Correct.
19	MR. PIPER: By the way, I'll just state,	19	Q. Do you have a copy of that e-mail where he
20	Mr. Hayes, for your benefit that late Friday	20	sent you the document?
21	afternoon a number of documents were produced by BMW	21	A. Yes.
22	in response to our document request; and they would	22	Q. Now, looking at Exhibit 8 I'm sorry
23	have the BMW Bates label like these. So, I don't	23	Exhibit 5, which is the August 8th e-mail, do you
24	know if you	24	recognize this string of e-mails?
25	MR. HAYES: I believe I received them as	25	A. Yes.
	26		28
1	well. I've only briefly looked at them, but I	1	Q. And, to your knowledge, is the one at the
2	suspect they speak for themselves.	2	top of the chain that's dated August 8th, is that
3	Q. (BY MR. PIPER) So, do you recognize this	3	the first time you heard from BMW that they had an
4	chain of e-mails, Mr. Ryan?	4	issue about fax marketing?
5	A. Yes.	5	A. I believe so, yes.
6	Q. Have you looked at these at any time after	6	Q. Incidentally, there's a discrepancy which
7	the date that they were sent?	7	I doubt you can explain; but I'll just bring it to
8	A. Once.	8	your attention.
9	Q. When was that?	9	But if you look at Exhibit 4 as it
10	A. I forwarded them to	10	was produced by BMW, the August 7th e-mail from Jake
11	THE WITNESS: You.	11	Thompson to you is dated August 7th at 2:17 p.m.
12	MR. PIPER: Now, for the record, I don't	12	whereas on Exhibit 5 that same e-mail on August 7th
13	believe you've produced these to me, Mr. Hayes.	13	is dated 9:17 p.m. and that's the way these pages
14 15	Now and I believe you were was your response	14	were produced to me by BMW.
16	yes, no, or I don't know? MR. HAYES: I don't know. I don't know	15	Do you have any knowledge of why
17	what you're referring to.	16 17	there would be different dates for the same e-mail? A. No.
18	MR. PIPER: Well, for example, I don't	18	
19	think these e-mails between Mr. Thompson and	19	Q. Okay. Did you ever recall that there was something funny about the time stamps on e-mails
20	Mr. Ryan had been produced by CreditSmarts to me.	20	from BMW? You know, the time is not making sense or
21	MR. HAYES: Off the top of my head, I	21	anything like that?
22	don't know that.	22	A. I don't examine the e-mails closely.
			The state of the s
23	THE WITNESS: Did I not send those to you?	23	Q. Okay. Fair enough.
23 24	THE WITNESS: Did I not send those to you? I may not have sent them.	23 24	Q. Okay. Fair enough. Now, I'm just going to ask you

29 31 1 1 triggers memories; or it makes the memory clearer e-mail concerning Up2Drive, was there an attachment 2 2 than it was before. to that e-mail? I'm asking somewhat the same 3 Now that you look at this e-mail, do 3 question I asked because counsel interrupted me. 4 you recall whether this was the first time you were 4 A. No. The e-mail is one body. aware that there was any issue about fax marketing Q. So, in the body of the e-mail, was there 6 at CreditSmarts? That is, do you recall whether you 6 information about Up2Drive? 7 had already gotten the solicitation when you got 7 A. Correct. 8 Q. Who was that e-mail sent to by you? this e-mail supposedly on Thursday, August 8th, 8 9 2013? 9 A. Auto dealerships. 10 A. I don't recall. 10 Q. How many auto dealerships did you send 11 Q. Okay. 11 that to? 12 MR. PIPER: Could you mark that as the 12 A. Including my close friends, I wouldn't 13 next exhibit? 13 have knowledge. Q. Was it more than ten? 14 (Deposition Exhibit 6 was marked.) 14 15 Q. (BY MR. PIPER) Do you recognize that 15 A. I wouldn't have knowledge. 16 e-mail? 16 Q. Do you have a copy of that e-mail still in 17 your company records? 17 A. Yes. Q. And what is that e-mail? 18 A. No. 19 A. An e-mail from myself to Jake Thompson. 19 Q. Do you have it in your e-mail program? Q. When you sent this e-mail, had you 20 20 A. No. communicated by e-mail with Alex Gomez? 21 21 Q. Okay. Is it possible that if you went 22 A. Yes. 22 into the sent e-mails folder in your e-mail program 23 Q. Do you know why in this e-mail you refer 23 on your computer, there would be a copy of that 24 to an e-mail sent out to the registered dealer list 24 e-mail? 25 and forwarding the e-mail? 25 A. It's possible. 30 32 1 1 This -- in your e-mail you say, The Q. Okay. What e-mail program do you use when 2 employee who sent the e-mail out to our registered 2 you send e-mail? 3 3 dealer list forwarded the e-mail to me. Why are you A. Vertical Response. talking about an e-mail sent to the dealer list 4 Q. And is that a -- an e-mail software 4 5 5 instead of a fax sent to the dealer list? program? 6 A. Typographical error. 6 A. It is one that I was trying. 7 Q. Okay. So, when you wrote e-mail, you 7 Q. When did -- what period were you using the 8 meant fax; is that correct? 8 Vertical Response e-mail program? 9 A. Yes. 9 A. 2012 and 2013. 10 10 Q. Was there an e-mail sent to your dealer Q. Is that the one you use now? list with an advertisement for Up2Drive? 11 12 A. No. I sent an e-mail during that year to Q. When did you -- what are you using now? 12 13 some dealerships that are friends of mine 13 A. I'm not using anything right now. 14 personally, and that was linked to Facebook on 14 Q. Okay. So, you just use an Internet 15 accident. 15 interface for e-mail? 16 Q. Okay. Did the e-mail that you sent to the 16 A. Correct. 17 dealers concern the Up2Drive program? 17 Q. When did you stop using the Vertical Response program? 18 A. It had an instructional image for them to 18 19 19 A. Several months ago. I never used it deposit the checks. 20 MR. GARCIA: Objection. Can we clarify 20 prolifically. 21 which dealers he's talking about? Is this the list 21 Q. Okay. Have you deleted it from your 22 of CreditSmarts' dealers or the personal friends? 22 computer? 23 THE WITNESS: These are personal friends. 23 A. I don't know. 24 Q. (BY MR. PIPER) When you sent the e-mail --24 Q. Was that Vertical Response program linked 25 well, let me step back because -- when you sent the to the sryan@creditsmarts.com e-mail? That is, did

	33		35
1	all the e-mail for sryan@creditsmarts.com go to	1	A. It's a program.
2	Vertical Response?	2	Q. It's a program. Other than Outlook
3	A. No.	3	Vertical Response, and WebMail, have you used any
4	Q. What e-mail addresses were linked to the	4	other
5	Vertical Response?	5	A. No.
6	A. Sryan@creditsmarts.com.	6	Q software?
7	MR. HAYES: Jon, before we proceed any	7	A. No.
8	further, I'm struggling to see what possible	8	Q. And other than is there any Internet
9	connection these e-mails have with the facts at	9	Web site you can go to to access your
10	issue in this lawsuit. What's the connection?	10	CreditSmarts.com e-mail?
11	MR. PIPER: Well, for one thing, I think	11	A. WebMail.
12	we've established that there are e-mails that may	12	Q. WebMail is is it WebMail.com?
13	not have been produced in the case. So, I think I'm	13	A. No. It's WebMail.
14	entitled to know about his e-mail technology for	14	Q. Okay. Is that a
15	purposes of document discovery. He's also testified	15	A. CreditSmarts.com.
16	that he sent an e-mail with information about the	16	Q. At CreditSmarts.com?
17	Up2Drive program. So, I think that's certainly	17	A. Correct.
18	something I'm entitled to ask about.	18	Q. In other words, you as an employee of
19	MR. HAYES: And you're presumably	19	CreditSmarts and owner can get into your e-mail at
20	you're going to then ask about those, or you're	20	CreditSmarts.com through the CreditSmarts.com Web
21	going to ask about just in general?	21	page; is that correct?
22	MR. PIPER: Well, I'm trying to figure out	22	A. Correct. For at least 30 days that we
23	what e-mail program he used.	23	keep that CreditSmarts keeps records.
24	Q. (BY MR. PIPER) So, what means do you have	24	Q. Okay. Does CreditSmarts have a practice
25	to access your sryan@creditsmarts.com e-mail other	25	of deleting all e-mails after 30 days?
	0.4		
	34		36
1	-	1	36 A. Yes.
1 2	than the Vertical Response program? That is, if you want to go check your e-mail, what are the different	1 2	
	than the Vertical Response program? That is, if you		A. Yes.
2	than the Vertical Response program? That is, if you want to go check your e-mail, what are the different	2	A. Yes. Q. Then why would some of these e-mails still
2	than the Vertical Response program? That is, if you want to go check your e-mail, what are the different means that you have for checking your e-mail?	2	A. Yes. Q. Then why would some of these e-mails still be in your e-mail system possibly?
2 3 4	than the Vertical Response program? That is, if you want to go check your e-mail, what are the different means that you have for checking your e-mail? A. Android phone.	2 3 4	A. Yes.Q. Then why would some of these e-mails still be in your e-mail system possibly?A. I use Outlook.
2 3 4 5	than the Vertical Response program? That is, if you want to go check your e-mail, what are the different means that you have for checking your e-mail? A. Android phone. Q. And do you use a special app on your	2 3 4 5	 A. Yes. Q. Then why would some of these e-mails still be in your e-mail system possibly? A. I use Outlook. Q. Okay. So, they get deleted off the
2 3 4 5 6	than the Vertical Response program? That is, if you want to go check your e-mail, what are the different means that you have for checking your e-mail? A. Android phone. Q. And do you use a special app on your Android phone to access the sryan@creditsmarts.com	2 3 4 5 6	 A. Yes. Q. Then why would some of these e-mails still be in your e-mail system possibly? A. I use Outlook. Q. Okay. So, they get deleted off the CreditSmarts.com interface; but they may still be in
2 3 4 5 6 7	than the Vertical Response program? That is, if you want to go check your e-mail, what are the different means that you have for checking your e-mail? A. Android phone. Q. And do you use a special app on your Android phone to access the sryan@creditsmarts.com e-mail?	2 3 4 5 6 7	A. Yes. Q. Then why would some of these e-mails still be in your e-mail system possibly? A. I use Outlook. Q. Okay. So, they get deleted off the CreditSmarts.com interface; but they may still be in the Outlook system; is that correct?
2 3 4 5 6 7 8	than the Vertical Response program? That is, if you want to go check your e-mail, what are the different means that you have for checking your e-mail? A. Android phone. Q. And do you use a special app on your Android phone to access the sryan@creditsmarts.com e-mail? A. No.	2 3 4 5 6 7 8	 A. Yes. Q. Then why would some of these e-mails still be in your e-mail system possibly? A. I use Outlook. Q. Okay. So, they get deleted off the CreditSmarts.com interface; but they may still be in the Outlook system; is that correct? A. Correct.
2 3 4 5 6 7 8	than the Vertical Response program? That is, if you want to go check your e-mail, what are the different means that you have for checking your e-mail? A. Android phone. Q. And do you use a special app on your Android phone to access the sryan@creditsmarts.com e-mail? A. No. Q. You just use whatever app is built into	2 3 4 5 6 7 8	A. Yes. Q. Then why would some of these e-mails still be in your e-mail system possibly? A. I use Outlook. Q. Okay. So, they get deleted off the CreditSmarts.com interface; but they may still be in the Outlook system; is that correct? A. Correct. Q. Okay. Going back to six. At the time you
2 3 4 5 6 7 8 9	than the Vertical Response program? That is, if you want to go check your e-mail, what are the different means that you have for checking your e-mail? A. Android phone. Q. And do you use a special app on your Android phone to access the sryan@creditsmarts.com e-mail? A. No. Q. You just use whatever app is built into the Android system for e-mail?	2 3 4 5 6 7 8 9	A. Yes. Q. Then why would some of these e-mails still be in your e-mail system possibly? A. I use Outlook. Q. Okay. So, they get deleted off the CreditSmarts.com interface; but they may still be in the Outlook system; is that correct? A. Correct. Q. Okay. Going back to six. At the time you sent this e-mail, do you know whether you were aware.
2 3 4 5 6 7 8 9 10	than the Vertical Response program? That is, if you want to go check your e-mail, what are the different means that you have for checking your e-mail? A. Android phone. Q. And do you use a special app on your Android phone to access the sryan@creditsmarts.com e-mail? A. No. Q. You just use whatever app is built into the Android system for e-mail? A. Correct.	2 3 4 5 6 7 8 9 10	A. Yes. Q. Then why would some of these e-mails still be in your e-mail system possibly? A. I use Outlook. Q. Okay. So, they get deleted off the CreditSmarts.com interface; but they may still be in the Outlook system; is that correct? A. Correct. Q. Okay. Going back to six. At the time you sent this e-mail, do you know whether you were aware that a lawsuit had been filed about this fax?
2 3 4 5 6 7 8 9 10 11	than the Vertical Response program? That is, if you want to go check your e-mail, what are the different means that you have for checking your e-mail? A. Android phone. Q. And do you use a special app on your Android phone to access the sryan@creditsmarts.com e-mail? A. No. Q. You just use whatever app is built into the Android system for e-mail? A. Correct. Q. Do you use any other do you have an	2 3 4 5 6 7 8 9 10 11	A. Yes. Q. Then why would some of these e-mails still be in your e-mail system possibly? A. I use Outlook. Q. Okay. So, they get deleted off the CreditSmarts.com interface; but they may still be in the Outlook system; is that correct? A. Correct. Q. Okay. Going back to six. At the time you sent this e-mail, do you know whether you were aware that a lawsuit had been filed about this fax? A. Yes.
2 3 4 5 6 7 8 9 10 11 12 13	than the Vertical Response program? That is, if you want to go check your e-mail, what are the different means that you have for checking your e-mail? A. Android phone. Q. And do you use a special app on your Android phone to access the sryan@creditsmarts.com e-mail? A. No. Q. You just use whatever app is built into the Android system for e-mail? A. Correct. Q. Do you use any other do you have an Internet access just by going straight through the	2 3 4 5 6 7 8 9 10 11 12 13	A. Yes. Q. Then why would some of these e-mails still be in your e-mail system possibly? A. I use Outlook. Q. Okay. So, they get deleted off the CreditSmarts.com interface; but they may still be in the Outlook system; is that correct? A. Correct. Q. Okay. Going back to six. At the time you sent this e-mail, do you know whether you were aware that a lawsuit had been filed about this fax? A. Yes. Q. And where did that knowledge come from?
2 3 4 5 6 7 8 9 10 11 12 13 14	than the Vertical Response program? That is, if you want to go check your e-mail, what are the different means that you have for checking your e-mail? A. Android phone. Q. And do you use a special app on your Android phone to access the sryan@creditsmarts.com e-mail? A. No. Q. You just use whatever app is built into the Android system for e-mail? A. Correct. Q. Do you use any other do you have an Internet access just by going straight through the Internet to get to your CreditSmarts.com e-mail?	2 3 4 5 6 7 8 9 10 11 12 13 14	A. Yes. Q. Then why would some of these e-mails still be in your e-mail system possibly? A. I use Outlook. Q. Okay. So, they get deleted off the CreditSmarts.com interface; but they may still be in the Outlook system; is that correct? A. Correct. Q. Okay. Going back to six. At the time you sent this e-mail, do you know whether you were aware that a lawsuit had been filed about this fax? A. Yes. Q. And where did that knowledge come from? Was it simply from the solicitation that you had
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	than the Vertical Response program? That is, if you want to go check your e-mail, what are the different means that you have for checking your e-mail? A. Android phone. Q. And do you use a special app on your Android phone to access the sryan@creditsmarts.com e-mail? A. No. Q. You just use whatever app is built into the Android system for e-mail? A. Correct. Q. Do you use any other do you have an Internet access just by going straight through the Internet to get to your CreditSmarts.com e-mail? A. I use Outlook. Q. And other than Outlook and Vertical Response and your Android phone app, have you used any other interfaces to access your CreditSmarts.com e-mail? A. Yes. Q. Okay. What other interfaces have you used?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Yes. Q. Then why would some of these e-mails still be in your e-mail system possibly? A. I use Outlook. Q. Okay. So, they get deleted off the CreditSmarts.com interface; but they may still be in the Outlook system; is that correct? A. Correct. Q. Okay. Going back to six. At the time you sent this e-mail, do you know whether you were aware that a lawsuit had been filed about this fax? A. Yes. Q. And where did that knowledge come from? Was it simply from the solicitation that you had gotten from the law firm? A. Yes. Q. Had you had any conversations with Jake Thompson by August 11th when you sent this e-mail concerning the fax? A. I don't think so. Q. Okay. If you go back to Exhibit 5, I'm just trying to refresh your or exhaust your

39 37 call? Did you call him, or did he call you? 1 wanted to discuss a piece of fax marketing, and your 2 2 best recollection is you did not discuss that with A. I don't recall. 3 him before sending the e-mail on Sunday? That is, 3 MR. PIPER: Can you mark that as the next 4 you didn't call him to find out what it was that he 4 exhibit? was asking about or anything like that? (Deposition Exhibit 8 was marked.) A. Correct. 6 Q. (BY MR. PIPER) Do you recognize the 6 7 Q. Okay. Looking at these e-mails, do you 7 e-mails in Exhibit 8? 8 8 A. Yes. know when is the first time you had a phone call 9 with Mr. Thompson to talk about the fax issue? 9 Q. Is that an e-mail you sent on about A. I don't recall. 10 August 12th, 2013 to Mr. Thompson? 10 11 Q. Let me mark the next exhibit. 11 A. Yes. 12 (Deposition Exhibit 7 was marked.) 12 Q. Do you recall whether this was before or 13 Q. (BY MR. PIPER) Do you recall receiving 13 after you had the telephone conference with him? A. I don't recall. This would be before. 14 this e-mail from Mr. Thompson? 14 15 A. Yes. 15 Q. This was before the phone call --16 Q. Now, why -- do you recall it from when you 16 A. Correct. 17 originally received it or do you recall it because 17 Q. -- with him? 18 Okay. Do you know if there was 18 you looked at it later or both? 19 19 A. I recall it because you're showing it to something that happened between Sunday -- well, the 20 first sentence says, I now know what this is all 2.0 21 Q. So, now that you look at it, you remember 21 about; and I'm terribly upset. 22 22 setting up a phone call with him? Had something happened between the 23 A. Correct. 23 e-mail you sent on Sunday and the e-mail you sent on 24 24 Q. And did you have a phone call with him Monday that gave you more information about what had 25 around August 13th of 2013? 25 happened? 38 40 1 A. I believe that's when I looked this 1 A. I assume -- I assume that was the date. 2 Q. Okay. You recall sometime after sending document up on Pacer. 3 him these e-mails that the two of you talked on the 3 Q. Okay. 4 phone. 4 A. I must have --5 5 What was the general subject matter Q. So, when you were sent the Sunday e-mail, 6 of that phone call? 6 you had gotten an e-mail from Alex Gomez but you 7 A. This fax. 7 hadn't looked it up on Pacer yet and then Monday you 8 Q. Okay. And what did Mr. Thompson say to 8 looked it up on Pacer and that's when you learned 9 9 more about what was going on? 10 A. That their attorneys were looking into it. A. Correct. 10 Q. Did he say anything other than the fact 11 Q. And the Sunday e-mail -- I'm sorry. Did 11 that his attorneys were looking into it? 12 you have something you wanted to add? 12 13 A. Other than we shouldn't discuss it. 13 A. No. I was incorrect earlier. It looks 14 14 Q. So, what did he say to you about the fact like -- and I don't recall this, but it looks like 15 that you shouldn't discuss it? 15 Alex offered his resignation that day. 16 A. He said Up2Drive attorneys told him not to 16 Q. Do you recall that? 17 discuss it. 17 A. No. 18 Q. At the bottom of the page there's the Q. Okay. So, after he reached out to you 18 19 19 Sunday e-mail. It says you were out of town and did asking to talk to you, then when you talked, he said he didn't want to discuss it with you? 20 not authorize this. 20 21 A. Correct. 21 Was that information that Alex Gomez 22 22 Q. Did you tell him anything in that phone had conveyed to you before you sent the e-mail? 23 call? 23 A. What information? 24 24 Q. In the Sunday e-mail at the bottom of the A. No, not that I recall. 25 Q. Do you remember who initiated that phone page, it says -- or if it's easier, you can look at

41 43 the version on Exhibit --1 MR. HAYES: Sean, do you understand that? 1 2 2 A. No. Please rephrase your question. In other words, he's going to ask you about maybe if 3 You're asking me --3 conversations took place, when or where. For what 4 Q. Look at Exhibit 6, which is the Sunday 4 purpose, I'm not sure. But the subject matter or 5 e-mail you sent; and you see at the end of the first 5 the contents of the conversation is protected by the 6 paragraph it says, I was out of town and did not 6 attorney/client relationship. So, to the extent you 7 authorize this. 7 remember that, don't provide that information. 8 Was -- was that based on information 8 THE WITNESS: Okay. 9 Alex Gomez had provided you? 9 Q. (BY MR. PIPER) Okay. So, in this e-mail 10 10 A. No. to Jake Thompson on August 12th, 2013, you state Q. So, was that based simply on the date that 11 11 that a friend of mine referred me to a law office 12 was on the fax? 12 that has handled things like this before. 13 A. Correct. 13 And my first question is: Who was 14 Q. And you knew you were out of town on 14 the friend that referred you -- did a friend refer 15 December 27th, 2013? 15 you to a law office that has handled things like 16 A. Yes. As I am every year. 16 this before in that time frame? 17 Q. And where is it that you go every year 17 A. Tom Hudson. 18 that led you to believe you were out of town when Q. And is Tom Hudson an attorney? 18 19 this fax was sent? 19 A. Yes. 2.0 A. San Diego race track. 20 Q. And is Alex (sic) Kaplinsky the attorney 21 Q. Who do you go to the race track with every that Tom Hudson referred you to? 21 22 year? 22 A. Yes. 23 A. My family. 23 Q. And you ended up using a different law 24 Q. How big of a group is that? That is, is 24 firm to -- did you end up retaining Mr. Kaplinsky 25 it just your personal -- your nuclear family of your 25 to --42 44 1 wife and kids --1 A. No. 2 MR. GARCIA: Objection. 2 Q. -- represent you? 3 3 Q. (BY MR. PIPER) -- or do you go with other MR. HAYES: Let him finish his question. 4 THE WITNESS: I'm hoping to get to my 5 5 A. My family and friends. son's swim meet. Sorry. 6 Q. How big of a group is that? 6 Q. (BY MR. PIPER) Instead, you hired the 7 A. 30 to 40 people. 7 Gibbons law firm? Q. And how long does that outing last? 8 8 A. Yes. 9 9 A. All day. Q. What time do you need to get out of here 10 10 Q. Just for one day? to make your son's swim meet? 11 A. We go on the 26th, the day after 11 A. I'm not going to make it at this point. 12 Christmas; and then we go back on the 27th as a I did have a conversation with Alan 12 13 13 Kaplinsky. 14 Q. Going back to Exhibit 8. Okay. I don't 14 Q. Okay. 15 want to get into any substantive discussions you had 15 A. He refused to take the case. He looked 16 about substance with any attorney unless you want to 16 up --17 get into that but -- that is, any attorney that was 17 (Deposition Exhibit 9 was marked.) 18 18 Q. (BY MR. PIPER) Okay. Well, since you went your attorney; but I can ask you about times when 19 you talked to attorneys or what attorneys you talked 19 that far, it says here that they represent BMW on 20 20 other cases; and he ended up not taking the case; is 21 21 that correct? So, I'm going to ask you some 22 questions where you should just stick to when you 22 A. Correct. 23 talked to people but not get into what you talked to 23 MR. GARCIA: Object to that. 24 them about to protect your attorney/client 24 MR. PIPER: Object to what? 25 25 privilege. MR. GARCIA: The question.

47 45 1 MR. PIPER: The last question. Okay. 1 was sent in December, 2012, had you had any 2 2 Q. (BY MR. PIPER) Exhibit 9, do you recognize discussions with Jake Thompson about growing the 3 this e-mail? 3 number of applications that were being received 4 through Up2Drive -- for Up2Drive through 4 A. Now that you've shown it to me. 5 Q. When you state that, quote, My firm is 5 CreditSmarts? going to make this thing go away and needs a contact 6 A. I don't recall. 6 7 at Up2Drive, close quote, which law firm were you 7 MR. PIPER: If you could mark this as the 8 8 referring to there? next exhibit 9 A. Gibbons. 9 (Deposition Exhibit 11 was marked.) 10 10 Q. (BY MR. PIPER) Okay. If you could look at Q. And what was your basis for thinking that 11 they were going --11 that, do you recall receiving this e-mail in 12 MR. HAYES: Objection. 12 December, 2012? Q. (BY MR. PIPER) -- to make this thing go 13 A. No. 13 Q. Does this refresh your recollection that 14 away? 14 15 15 MR. HAYES: Objection. That involves Jake Thompson wanted to make changes or enhancement 16 16 attorney/client discussion. to keep growing the number of applications? 17 Q. (BY MR. PIPER) Well, was the statement you 17 A. No. 18 made to Mr. Thompson on August 28th, 2013 that your 18 Q. Do you recall whether you had any 19 19 firm was going to make this go away a true discussions with anyone at CreditSmarts about 20 statement? 20 growing the number of applications for Up2Drive? 21 21 MR. GARCIA: Objection. A I don't recall 22 22 MR. HAYES: Objection. That, again, Q. Did you ever have a business goal of 23 involves the discussions with the client as to 23 trying to grow the number of applications for Up2Drive? 24 24 whether or not it was a valid or invalid 25 proposition. 25 A. Please explain. 46 48 MR. PIPER: Well, the thing is I'm asking 1 Q. Did you ever, as a business goal, want to 1 increase the number of applications that were being 2 about something he said to Jake Thompson. So, I 2 3 don't understand how what he's -- whether what he 3 submitted through CreditSmarts to Up2Drive? 4 told Jake Thompson was true or not is a privileged 4 A. As a business goal, CreditSmarts would 5 5 matter; or if it is privileged, he's waived the like to increase applications to all lenders. 6 privilege by disclosing it to Mr. Thompson. 6 Q. Do you have any understanding of whether 7 MR. HAYES: You'll have to take that up 7 Exhibit 1 to you appears to be designed to increase 8 8 with the Court. applications for Up2Drive? 9 9 MR. PIPER: Okay. A. I don't know the intent. I didn't send 10 10 By the way, Madam Court Reporter, do you it. 11 have the spelling for Up2Drive, which is U-p and 11 Q. Okay. But as someone who runs 12 then the number 2 Drive, all one word. 12 CreditSmarts and understands your business, can you 13 Q. (BY MR. PIPER) At this point had you had 13 see how an advertisement explaining the terms of the 14 any conversations with Mr. Thompson other than the 14 Up2Drive program would help to increase applications 15 one conversation where he told you he didn't want to 15 for that program? 16 talk to you? 16 MR. GARCIA: Objection. A. No. 17 MR. HAYES: Go ahead and answer. 17 (Deposition Exhibit 10 was marked.) 18 A. The CreditSmarts applications are filtered 18 19 19 Q. (BY MR. PIPER) And do you recognize the by credit. Whether there was a promotional rate 20 e-mail that's Exhibit 10? 20 update or not, there's no way to do that. 21 A. Now that you've shown it to me. 21 CreditSmarts cannot increase applications by way of 22 22 Q. Okay. So, you remember getting a legal fax. They're filtered by credit. 23 contact back from Jake Thompson? 23 Q. (BY MR. PIPER) Well, isn't it true that an 24 24 A. Correct. advertisement like this will help to promote 25 25 Q. Before the fax that's marked as Exhibit 1 applications through CreditSmarts?

49 MR. GARCIA: Objection. 1 changes or enhancements that could have been made to 1 2 2 CreditSmarts that would specifically grow the number A. I -- I don't follow your question. 3 Q. (BY MR. PIPER) Okay. So, your testimony 3 of applications? 4 is that making your customers aware that they could 4 A. Yes. access the Up2Drive program through CreditSmarts MR. GARCIA: Objection. 6 Q. (BY MR. PIPER) How about the number of 6 would not benefit CreditSmarts? 7 MR. HAYES: Objection. There's been no 7 applications for Up2Drive? 8 8 A. Yes. foundation that that was sent to the customers. 9 MR. PIPER: Can you read back the 9 Q. What would be ways to change or enhance 10 the program to grow the number of applications for 10 question? 11 (Whereupon the requested portion of 11 Up2Drive? 12 testimony was read back.) 12 A. Up2Drive could choose to lower their 13 A. Please rephrase. That's a double 13 credit criteria and disable their requirement for an 14 negative, and I'm still lost as to the question. 14 e-mail address on a credit application. 15 Q. (BY MR. PIPER) Okay. How did 15 Q. Other than changing its credit requirements or disabling the e-mail address field, 16 CreditSmarts -- CreditSmarts' business and 16 17 is there any other way that you could have made profitability depended on -- in part, on loans being 17 submitted through CreditSmarts -- loan applications 18 changes or enhancements to --18 19 19 being submitted through CreditSmarts; is that A. No. correct? 20 Q. -- grow the number of applications? 2.0 21 21 A. Correct. A No. 22 Q. And, therefore, increasing the number of 22 Q. Do you know if that was communicated to 23 23 Mr. Thompson after he sent this December 6th, 2012 loan applications that were submitted through 24 CreditSmarts enhanced your business; is that 24 e-mail? 25 25 A. I don't recall. correct? 50 52 1 Q. Do you recall whether you ever had any 1 MR. GARCIA: Objection. 2 2 A. Correct. discussions with Mr. Thompson about his not 3 understanding how CreditSmarts worked? 3 Q. (BY MR. PIPER) And one of the ways to increase the number of loan applications through 4 A. I don't recall. 5 5 CreditSmarts was to make auto dealers aware of the Q. Do you recall if you ever had -- with 6 benefits of submitting loans through CreditSmarts; 6 Mr. Thompson any discussions about him needing to 7 is that correct? 7 change -- or the desirability of changing the credit 8 requirements for Up2Drive? 8 A. No. 9 9 Q. Okay. Why is that not correct? A. I don't recall. 10 A. Because our customer -- CreditSmarts' 10 MR. PIPER: Could you mark that as the customers should be submitting the applications from 11 11 the point of sale regardless of whether they are a 12 (Deposition Exhibit 12 was marked.) 12 13 demographic for Up2Drive or not. 13 Q. (BY MR. PIPER) Do you recognize these 14 MR. HAYES: Can we go off the record for 14 e-mails, sir? 15 just a second? 15 A. Now that you show them to me. 16 (Recess taken from 10:59 a.m. to 11:00 16 Q. And did you get an e-mail from Jake 17 17 Thompson in about September, 2012 discussing what it a.m.) 18 Q. (BY MR. PIPER) Was there any method that 18 is to promote the Up2Drive product? 19 MR. GARCIA: Objection. 19 you're aware of for growing the number of 20 applications that would be filtered to Up2Drive? 20 A. Repeat the question. 21 MR. GARCIA: Objection. 21 Q. (BY MR. PIPER) Did you get an e-mail from 2.2 A. In general. Growing applications in 22 Jake Thompson in about September, 2012 about 23 general, not specific to Up2Drive. I can't control 23 figuring how to promote the Up2Drive product? 24 24 the credit quality of the consumer. 25 25 Q. (BY MR. PIPER) Well, are you aware of any Q. And did you ever have any discussions with

53 55 1 Q. I'm not asking about what Up2Drive told 1 him about how to promote the Up2Drive product? 2 2 A. According to this e-mail, it looks like we you. I'm asking did any of the customers in your 3 discussed via e-mail the e-mail address. 3 database specifically request an Up2Drive fax from 4 4 Q. Do you recall that you discussed that with CreditSmarts? him other than getting the e-mail? 5 A. I don't know. 6 Q. Do you have any reason to believe anybody 6 A. I don't recall. 7 Q. Okay. Is it your testimony that Exhibit 1 7 asked CreditSmarts to send them a fax about 8 8 does not advertise the Up2Drive program? Up2Drive? 9 A. That is my testimony. 9 A. I don't see any reason why they wouldn't. 10 10 Q. And is it your testimony that Exhibit 1 Q. Do you see any reason why they would? Do 11 does not promote the Up2Drive program? 11 you have any reason to think that somebody asked you 12 A. It's an informational e-mail. 12 for a fax about Up2Drive and that that had anything 13 13 Q. Okay. What do you mean by "an to do with why this fax was sent? informational e-mail"? MR. HAYES: I object. Jon, I think we've 14 14 15 15 established his answer is he doesn't know. Okay. A. Auto dealerships who subscribe to 16 16 CreditSmarts request information to be faxed to them So, if you don't know, you don't know. Please move 17 17 regarding lender-specific product. 18 Q. (BY MR. PIPER) Right. But do you have 18 Q. So, is your testimony that the audience 19 19 for this fax was dealers that had specifically any -- apart from the fact that you don't know that, 20 requested information about Up2Drive? 20 do you have any information that would make that 21 21 A. Correct. more likely to be true than not? 22 Q. And what's your basis for that testimony? 22 A. I can tell you Up2Drive is one of the best 23 23 finance programs available on the market, and anyone A. Because that fax was sent out. 24 2.4 Q. But how do you know who received the fax? who sells auto dealerships -- or autos should and A. The only fax numbers that CreditSmarts has 25 would be excited about the opportunity to do that. 54 56 1 are from participating CreditSmarts auto 1 Q. And the opportunity to do that would be by 2 dealerships. CreditSmarts has paid thousands of 2 submitting applications to CreditSmarts? 3 3 dollars in telemarketing expenses to speak to A. Correct. 4 independent, nonfranchise, small business 4 Q. So, letting dealers know that Up2Drive was 5 part of the lender network for CreditSmarts would dealerships. 5 6 Q. And how many of those dealerships said 6 help to increase CreditSmarts' applications; isn't 7 they wanted specifically information about the 7 that true? 8 Up2Drive program? 8 A. No. 9 9 A. I don't understand the question. Q. Well, who cares if they're excited if it's 10 Q. Did any of those dealerships say, Can you not going to make them submit more applications? 10 11 send me a fax about the Up2Drive program? MR. GARCIA: Objection. 11 12 A. I didn't speak to them. A. 90 percent of all loans are subprime, 12 13 Q. Do you have any reason, from your records, 13 negative credit. Up2Drive is a small fraction of 14 to think that any of those dealerships said, Send me 14 the entire market. 15 a fax about Up2Drive. I need their credit 15 Q. (BY MR. PIPER) So, why would it be 16 information? 16 exciting to anybody to be able to access Up2Drive 17 A. I -- no. 17 through your -- CreditSmarts? 18 Q. Okay. Do you have any reason to think 18 MR. GARCIA: Objection. 19 that any of your database fax number entries is a 19 Q. (BY MR. PIPER) You just said auto dealers 20 company that asked you to send them a fax about would be excited to know that they could access 2.0 21 Up2Drive specifically? 21 Up2Drive through CreditSmarts? 22 A. Specifically Up2Drive did not authorize 22 A. I'm projecting; but if I'm an auto 23 CreditSmarts to send that fax --23 dealership and the one customer out of 30 that has 24 Q. Right. But did anybody ask you for --24 significant credit capabilities, I would be excited 25 A. -- or any other information. 25 about that.

59 57 1 Q. Okay. And that would make them more 1 Q. And program guide updates advise them 2 2 likely to submit applications through CreditSmarts about the new lenders that are available; is that 3 if they fit that demographic? 3 correct? A. No. A. Correct. 4 4 5 Q. Why not? What would be the excitement 5 Q. Okay. And the more lenders that are 6 then? What could they do differently as a result of 6 available, the more attractive the CreditSmarts 7 Up2Drive being --7 product is, correct? A. Correct. 8 8 A. I don't think you understand the 9 9 Q. Other than sending this fax, did CreditSmarts system. 10 Q. Well, explain to me why would a dealer be 10 CreditSmarts do anything else to make any auto 11 excited that --11 dealers aware that Up2Drive was a lender that was 12 A. The CreditSmarts system --12 part of the network of lenders for CreditSmarts? 13 Q. -- he could access Up2Drive? 13 A. I sent an e-mail with instructions on how to cash a check. 14 THE COURT REPORTER: Let him finish. 14 15 A. The CreditSmarts system engages an auto 15 Q. Would you like to take a five-minute 16 dealership to pull credit on all of their consumer 16 break? 17 applicants at the point of sale. 90 percent of 17 A. No. MR. HAYES: What time is it? 18 those are subprime which would not fit into the 18 19 MR. PIPER: It's about 11:00. So, we've Up2Drive program. By default, if they are 19 20 submitting a credit application on CreditSmarts, 20 been going about an hour. 21 they would have the application in the CreditSmarts 21 MR. HAYES: Would you like to take a 22 system regardless of whether it was available to 22 break? 23 23 THE COURT REPORTER: Sure. Up2Drive or not. 24 24 Q. (BY MR. PIPER) So, why would it be (Recess taken from 11:12 a.m. to 11:17 25 exciting for an auto dealer to know that Up2Drive 25 a.m.) 58 60 was available through CreditSmarts? 1 Q. (BY MR. PIPER) Were the CreditSmarts 1 2 A. CreditSmarts' auto dealerships -product update faxes usually sent to people in the 3 CreditSmarts database? 3 participating auto dealerships receive information electronically, online, when they go onto 4 5 5 CreditSmarts on most CreditSmarts' participating Q. Are you aware of any product update faxes 6 lenders. That's expected. 6 that were sent to a list other than the CreditSmarts 7 Q. And why would it be exciting to know that 7 database? 8 8 one of those lenders was Up2Drive? A. No. 9 9 A. It's a new lender. Q. Do you have any real reason -- excuse me. 1.0 10 Q. And why would that be exciting? Do you have any reason to believe that Exhibit 1 was 11 MR. GARCIA: Objection. 11 sent to a list other than a list from the 12 CreditSmarts database? A. It's a new lender. New lenders are 12 13 exciting just like new customers are exciting. 13 A. No. 14 Q. (BY MR. PIPER) So, there's nothing 14 Q. The people that you sent the e-mail to 15 specific about Up2Drive? It would just be a new 15 with instructions about the check for Up2Drive -- so 16 lender? 16 far do you know what I'm talking about? 17 17 A. Yes. A. Yes. Q. How did your -- did your customers know 18 Q. Okay. That e-mail, were the recipients of 18 19 what lenders were available through CreditSmarts? 19 that e-mail people who were in the CreditSmarts 20 A. If they submitted a credit application 20 database? 21 that qualifies, they will know. 21 A. Yes. 22 Q. Is that the only way that your customers 22 Q. Does CreditSmarts have a Facebook page? 23 know what lenders are available through CreditSmarts 23 A. Yes. 24 24 is the loans that are approved? Q. Other than CreditSmarts.com and the 25 25 A. Other than program guide updates. Facebook page, does CreditSmarts maintain any other

	61		63
1	Web pages?	1	A. There was an inadvertent link from my
2	A. I think there's a LinkedIn profile.	2	e-mail to Facebook.
3	Q. Did you become aware at some point that	3	Q. And what was that inadvertent link? Was
4	there was a reference to Up2Drive on the	4	Facebook an addressee of your e-mail?
5	CreditSmarts Facebook page?	5	A. No. There was a "Like" option on the
6	A. Yes.	6	e-mail I sent.
7	Q. When did you become aware of that?	7	Q. So, the e-mail you sent inadvertently
8	A. Bill Hayes told me.	8	included a link to Facebook. Is that what you're
9	Q. And when did that happen?	9	saying?
10	A. Three weeks ago.	10	MR. GARCIA: Objection.
11	Q. After you had that conversation with	11	A. Correct.
12	Mr. Hayes three weeks ago, did you make any further	12	Q. (BY MR. PIPER) Was that something that
13	inquiry concerning the information about Up2Drive on	13	Facebook had put into your e-mail without your
14	the CreditSmarts Facebook page?	14	knowledge?
15	A. Yes. I removed the link.	15	A. Facebook did not put that in there.
16	Q. Before you removed the link, did you, in	16	Vertical Response did that without my knowledge.
17	fact, confirm that there was a promotion for	17	Q. The Vertical Response software program?
18	Up2Drive on the CreditSmarts Facebook page?	18	A. Correct.
19	A. There was not a promotion for Up2Drive	19	Q. Okay.
20	Q. What was	20	MR. PIPER: Why don't you mark that as the
21	A on the CreditSmarts Facebook page.	21	next exhibit?
22	Q. What was the reference to Up2Drive on the	22	MR. GARCIA: We're on 13?
23	CreditSmarts Facebook page?	23	THE COURT REPORTER: Yes.
24	A. It was a reference to an e-mail that was	24	(Deposition Exhibit 13 was marked.)
25	sent for instructions on how to cash the Up2Drive	25	Q. (BY MR. PIPER) Do you recognize this
	00		
	62		64
1	check.	1	document, sir?
1 2		1 2	
	check.		document, sir?
2	check. Q. Okay. Did you do anything to determine	2	document, sir? A. Yes.
2	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on	2	document, sir? A. Yes. Q. What is this document?
2 3 4	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page?	2 3 4	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile.
2 3 4 5	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes.	2 3 4 5	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the
2 3 4 5 6	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes. Q. And how did you investigate that?	2 3 4 5 6	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the second item is dated October 18th, 2012 and refers
2 3 4 5 6 7	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes. Q. And how did you investigate that? A. I went onto Facebook.	2 3 4 5 6 7	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the second item is dated October 18th, 2012 and refers to Up2Drive. Do you recognize that to be the link
2 3 4 5 6 7 8	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes. Q. And how did you investigate that? A. I went onto Facebook. Q. Okay. And how did you investigate	2 3 4 5 6 7 8	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the second item is dated October 18th, 2012 and refers to Up2Drive. Do you recognize that to be the link that was on your Facebook page for Up2Drive?
2 3 4 5 6 7 8	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes. Q. And how did you investigate that? A. I went onto Facebook. Q. Okay. And how did you investigate well, you investigated that it was on Facebook; but	2 3 4 5 6 7 8 9	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the second item is dated October 18th, 2012 and refers to Up2Drive. Do you recognize that to be the link that was on your Facebook page for Up2Drive? A. Yes.
2 3 4 5 6 7 8 9	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes. Q. And how did you investigate that? A. I went onto Facebook. Q. Okay. And how did you investigate well, you investigated that it was on Facebook; but how did you investigate why it was on Facebook?	2 3 4 5 6 7 8 9	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the second item is dated October 18th, 2012 and refers to Up2Drive. Do you recognize that to be the link that was on your Facebook page for Up2Drive? A. Yes. Q. Is October 18th the date is that
2 3 4 5 6 7 8 9 10	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes. Q. And how did you investigate that? A. I went onto Facebook. Q. Okay. And how did you investigate well, you investigated that it was on Facebook; but how did you investigate why it was on Facebook? I think you may have misunderstood my	2 3 4 5 6 7 8 9 10	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the second item is dated October 18th, 2012 and refers to Up2Drive. Do you recognize that to be the link that was on your Facebook page for Up2Drive? A. Yes. Q. Is October 18th the date is that consistent with your understanding that that's about
2 3 4 5 6 7 8 9 10 11	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes. Q. And how did you investigate that? A. I went onto Facebook. Q. Okay. And how did you investigate well, you investigated that it was on Facebook; but how did you investigate why it was on Facebook? I think you may have misunderstood my question. My question is: Did you do anything to	2 3 4 5 6 7 8 9 10 11	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the second item is dated October 18th, 2012 and refers to Up2Drive. Do you recognize that to be the link that was on your Facebook page for Up2Drive? A. Yes. Q. Is October 18th the date is that consistent with your understanding that that's about the date that that was posted on Facebook?
2 3 4 5 6 7 8 9 10 11 12	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes. Q. And how did you investigate that? A. I went onto Facebook. Q. Okay. And how did you investigate well, you investigated that it was on Facebook; but how did you investigate why it was on Facebook? I think you may have misunderstood my question. My question is: Did you do anything to investigate how that got on Facebook in the first	2 3 4 5 6 7 8 9 10 11 12 13	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the second item is dated October 18th, 2012 and refers to Up2Drive. Do you recognize that to be the link that was on your Facebook page for Up2Drive? A. Yes. Q. Is October 18th the date is that consistent with your understanding that that's about the date that that was posted on Facebook? A. Correct.
2 3 4 5 6 7 8 9 10 11 12 13	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes. Q. And how did you investigate that? A. I went onto Facebook. Q. Okay. And how did you investigate well, you investigated that it was on Facebook; but how did you investigate why it was on Facebook? I think you may have misunderstood my question. My question is: Did you do anything to investigate how that got on Facebook in the first place?	2 3 4 5 6 7 8 9 10 11 12 13 14	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the second item is dated October 18th, 2012 and refers to Up2Drive. Do you recognize that to be the link that was on your Facebook page for Up2Drive? A. Yes. Q. Is October 18th the date is that consistent with your understanding that that's about the date that that was posted on Facebook? A. Correct. Q. Would that be the date that you sent the
2 3 4 5 6 7 8 9 10 11 12 13 14 15	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes. Q. And how did you investigate that? A. I went onto Facebook. Q. Okay. And how did you investigate well, you investigated that it was on Facebook; but how did you investigate why it was on Facebook? I think you may have misunderstood my question. My question is: Did you do anything to investigate how that got on Facebook in the first place? A. Yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the second item is dated October 18th, 2012 and refers to Up2Drive. Do you recognize that to be the link that was on your Facebook page for Up2Drive? A. Yes. Q. Is October 18th the date is that consistent with your understanding that that's about the date that that was posted on Facebook? A. Correct. Q. Would that be the date that you sent the e-mail with the instructions?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes. Q. And how did you investigate that? A. I went onto Facebook. Q. Okay. And how did you investigate well, you investigated that it was on Facebook; but how did you investigate why it was on Facebook? I think you may have misunderstood my question. My question is: Did you do anything to investigate how that got on Facebook in the first place? A. Yes. Q. How did you investigate that?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the second item is dated October 18th, 2012 and refers to Up2Drive. Do you recognize that to be the link that was on your Facebook page for Up2Drive? A. Yes. Q. Is October 18th the date is that consistent with your understanding that that's about the date that that was posted on Facebook? A. Correct. Q. Would that be the date that you sent the e-mail with the instructions? A. Yes.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes. Q. And how did you investigate that? A. I went onto Facebook. Q. Okay. And how did you investigate well, you investigated that it was on Facebook; but how did you investigate why it was on Facebook? I think you may have misunderstood my question. My question is: Did you do anything to investigate how that got on Facebook in the first place? A. Yes. Q. How did you investigate that? A. I went onto Facebook.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the second item is dated October 18th, 2012 and refers to Up2Drive. Do you recognize that to be the link that was on your Facebook page for Up2Drive? A. Yes. Q. Is October 18th the date is that consistent with your understanding that that's about the date that that was posted on Facebook? A. Correct. Q. Would that be the date that you sent the e-mail with the instructions? A. Yes. Q. And to delete this link, did you have to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes. Q. And how did you investigate that? A. I went onto Facebook. Q. Okay. And how did you investigate well, you investigated that it was on Facebook; but how did you investigate why it was on Facebook? I think you may have misunderstood my question. My question is: Did you do anything to investigate how that got on Facebook in the first place? A. Yes. Q. How did you investigate that? A. I went onto Facebook. Q. And how did that enable you to figure out	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the second item is dated October 18th, 2012 and refers to Up2Drive. Do you recognize that to be the link that was on your Facebook page for Up2Drive? A. Yes. Q. Is October 18th the date is that consistent with your understanding that that's about the date that that was posted on Facebook? A. Correct. Q. Would that be the date that you sent the e-mail with the instructions? A. Yes. Q. And to delete this link, did you have to do was that something you could do yourself
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes. Q. And how did you investigate that? A. I went onto Facebook. Q. Okay. And how did you investigate well, you investigated that it was on Facebook; but how did you investigate why it was on Facebook? I think you may have misunderstood my question. My question is: Did you do anything to investigate how that got on Facebook in the first place? A. Yes. Q. How did you investigate that? A. I went onto Facebook. Q. And how did that enable you to figure out how it got posted there in the first place?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the second item is dated October 18th, 2012 and refers to Up2Drive. Do you recognize that to be the link that was on your Facebook page for Up2Drive? A. Yes. Q. Is October 18th the date is that consistent with your understanding that that's about the date that that was posted on Facebook? A. Correct. Q. Would that be the date that you sent the e-mail with the instructions? A. Yes. Q. And to delete this link, did you have to do was that something you could do yourself through your computer through Facebook?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes. Q. And how did you investigate that? A. I went onto Facebook. Q. Okay. And how did you investigate well, you investigated that it was on Facebook; but how did you investigate why it was on Facebook? I think you may have misunderstood my question. My question is: Did you do anything to investigate how that got on Facebook in the first place? A. Yes. Q. How did you investigate that? A. I went onto Facebook. Q. And how did that enable you to figure out how it got posted there in the first place? A. Because Facebook indicated that it was an	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the second item is dated October 18th, 2012 and refers to Up2Drive. Do you recognize that to be the link that was on your Facebook page for Up2Drive? A. Yes. Q. Is October 18th the date is that consistent with your understanding that that's about the date that that was posted on Facebook? A. Correct. Q. Would that be the date that you sent the e-mail with the instructions? A. Yes. Q. And to delete this link, did you have to do was that something you could do yourself through your computer through Facebook? A. Through Facebook, yes.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes. Q. And how did you investigate that? A. I went onto Facebook. Q. Okay. And how did you investigate well, you investigated that it was on Facebook; but how did you investigate why it was on Facebook? I think you may have misunderstood my question. My question is: Did you do anything to investigate how that got on Facebook in the first place? A. Yes. Q. How did you investigate that? A. I went onto Facebook. Q. And how did that enable you to figure out how it got posted there in the first place? A. Because Facebook indicated that it was an e-mail.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the second item is dated October 18th, 2012 and refers to Up2Drive. Do you recognize that to be the link that was on your Facebook page for Up2Drive? A. Yes. Q. Is October 18th the date is that consistent with your understanding that that's about the date that that was posted on Facebook? A. Correct. Q. Would that be the date that you sent the e-mail with the instructions? A. Yes. Q. And to delete this link, did you have to do was that something you could do yourself through your computer through Facebook? A. Through Facebook, yes. Q. In other words, you didn't have to make a
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	check. Q. Okay. Did you do anything to determine how that information about Up2Drive got posted on the CreditSmarts Facebook page? A. Yes. Q. And how did you investigate that? A. I went onto Facebook. Q. Okay. And how did you investigate well, you investigated that it was on Facebook; but how did you investigate why it was on Facebook? I think you may have misunderstood my question. My question is: Did you do anything to investigate how that got on Facebook in the first place? A. Yes. Q. How did you investigate that? A. I went onto Facebook. Q. And how did that enable you to figure out how it got posted there in the first place? A. Because Facebook indicated that it was an e-mail. Q. Who was it an e-mail from?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	document, sir? A. Yes. Q. What is this document? A. CreditSmarts' Facebook profile. Q. Okay. And on this left-hand column, the second item is dated October 18th, 2012 and refers to Up2Drive. Do you recognize that to be the link that was on your Facebook page for Up2Drive? A. Yes. Q. Is October 18th the date is that consistent with your understanding that that's about the date that that was posted on Facebook? A. Correct. Q. Would that be the date that you sent the e-mail with the instructions? A. Yes. Q. And to delete this link, did you have to do was that something you could do yourself through your computer through Facebook? A. Through Facebook, yes. Q. In other words, you didn't have to make a special request to Facebook that they delete this?

	65		67
1	document that's Exhibit 14?	1	files, they gave you the logo as an image file?
2	A. Yes.	2	A. Correct.
3	Q. And what is this document?	3	Q. What were the XML files they gave you?
4	A. It's an e-mail that I sent out.	4	A. For data exchange.
5	Q. And is this essentially the format that it	5	Q. What kind of data was included in the
6	was in your e-mail?	6	files they gave you?
7	A. Yes.	7	A. Credit application.
8	Q. And it's your testimony that this	8	Q. Do you recall what kind of image file the
9	information was in the body of the e-mail, not an	9	logo came as?
10	attachment?	10	A. I do not.
11	A. Yes.	11	Q. Was it basically one page with just the
12	Q. Okay. Where did you get the well, the	12	logo on it?
13	Up2Drive information in the left column, that's	13	A. I don't recall.
14	essentially the logo for Up2Drive that BMW created;	14	Q. Okay. So, when you created this e-mail,
15	is that correct?	15	you used the image of the Up2Drive logo that
16	A. Up2Drive created that.	16	Up2Drive had given you?
17	Q. Up2Drive created that logo?	17	A. Correct.
18	A. Correct.	18	Q. And was it your understanding that at
19	Q. How did you get that logo for your e-mail?	19	that time that that was permitted by Up2Drive?
20	A. Up2Drive provided it.	20	A. To display their logo, yes, along with
21	Q. Okay. So, you didn't just cut it off	21	that check.
22	the did Up2Drive know you were sending this	22	Q. Was the image of the check something that
23	e-mail?	23	they had given you?
24	A. No.	24	A. Yes.
25	Q. How did they give you the logo?	25	Q. And was that a separate image, or was that
1	A. During the technology interface.	1	68 image part of the
2	Q. And why did they give you the logo?	2	A. It was a separate image.
3	A. To display on the informational check that	3	Q. Okay. So, on the the left-hand I'm
4	is to the right of that. It needs to be bigger.	4	
5		4	sorry the right-hand column of Exhibit 14 there's
5	Q. So, at some point did Up2Drive actually	5	sorry the right-hand column of Exhibit 14 there's an image of two hands and a check, and that image is
6	Q. So, at some point did Up2Drive actually give you a data file with the image of their logo?		
		5	an image of two hands and a check, and that image is
6	give you a data file with the image of their logo?	5 6	an image of two hands and a check, and that image is something that Up2Drive gave you? A. Yes. Q. And as far as you understood, you were
6 7	give you a data file with the image of their logo? A. No. Q. How did they give you the logo? A. They gave me the logo.	5 6 7 8 9	an image of two hands and a check, and that image is something that Up2Drive gave you? A. Yes. Q. And as far as you understood, you were permitted to use the image of the two hands and the
6 7 8	give you a data file with the image of their logo? A. No. Q. How did they give you the logo? A. They gave me the logo. Q. What does that mean, though? What did	5 6 7 8	an image of two hands and a check, and that image is something that Up2Drive gave you? A. Yes. Q. And as far as you understood, you were
6 7 8 9	give you a data file with the image of their logo? A. No. Q. How did they give you the logo? A. They gave me the logo. Q. What does that mean, though? What did they give you? Did it happen electronically, or did	5 6 7 8 9 10	an image of two hands and a check, and that image is something that Up2Drive gave you? A. Yes. Q. And as far as you understood, you were permitted to use the image of the two hands and the check at CreditSmarts? A. Yes.
6 7 8 9 10	give you a data file with the image of their logo? A. No. Q. How did they give you the logo? A. They gave me the logo. Q. What does that mean, though? What did	5 6 7 8 9	an image of two hands and a check, and that image is something that Up2Drive gave you? A. Yes. Q. And as far as you understood, you were permitted to use the image of the two hands and the check at CreditSmarts?
6 7 8 9 10 11	give you a data file with the image of their logo? A. No. Q. How did they give you the logo? A. They gave me the logo. Q. What does that mean, though? What did they give you? Did it happen electronically, or did it happen did they give you a physical piece of paper? What did they give you?	5 6 7 8 9 10	an image of two hands and a check, and that image is something that Up2Drive gave you? A. Yes. Q. And as far as you understood, you were permitted to use the image of the two hands and the check at CreditSmarts? A. Yes. Q. And what were you permitted to use the logo and the image for?
6 7 8 9 10 11	give you a data file with the image of their logo? A. No. Q. How did they give you the logo? A. They gave me the logo. Q. What does that mean, though? What did they give you? Did it happen electronically, or did it happen did they give you a physical piece of paper? What did they give you? A. Electronically.	5 6 7 8 9 10 11 12	an image of two hands and a check, and that image is something that Up2Drive gave you? A. Yes. Q. And as far as you understood, you were permitted to use the image of the two hands and the check at CreditSmarts? A. Yes. Q. And what were you permitted to use the logo and the image for? A. For display.
6 7 8 9 10 11 12	give you a data file with the image of their logo? A. No. Q. How did they give you the logo? A. They gave me the logo. Q. What does that mean, though? What did they give you? Did it happen electronically, or did it happen did they give you a physical piece of paper? What did they give you? A. Electronically. Q. Okay. And what was it that they gave you?	5 6 7 8 9 10 11 12 13	an image of two hands and a check, and that image is something that Up2Drive gave you? A. Yes. Q. And as far as you understood, you were permitted to use the image of the two hands and the check at CreditSmarts? A. Yes. Q. And what were you permitted to use the logo and the image for? A. For display. Q. For what purpose?
6 7 8 9 10 11 12 13	give you a data file with the image of their logo? A. No. Q. How did they give you the logo? A. They gave me the logo. Q. What does that mean, though? What did they give you? Did it happen electronically, or did it happen did they give you a physical piece of paper? What did they give you? A. Electronically. Q. Okay. And what was it that they gave you? Was it a data file that constituted the logo? Was	5 6 7 8 9 10 11 12 13 14 15	an image of two hands and a check, and that image is something that Up2Drive gave you? A. Yes. Q. And as far as you understood, you were permitted to use the image of the two hands and the check at CreditSmarts? A. Yes. Q. And what were you permitted to use the logo and the image for? A. For display. Q. For what purpose? A. Cashing the check.
6 7 8 9 10 11 12 13 14	give you a data file with the image of their logo? A. No. Q. How did they give you the logo? A. They gave me the logo. Q. What does that mean, though? What did they give you? Did it happen electronically, or did it happen did they give you a physical piece of paper? What did they give you? A. Electronically. Q. Okay. And what was it that they gave you? Was it a data file that constituted the logo? Was it a jpeg? What did they give you an image file	5 6 7 8 9 10 11 12 13 14 15	an image of two hands and a check, and that image is something that Up2Drive gave you? A. Yes. Q. And as far as you understood, you were permitted to use the image of the two hands and the check at CreditSmarts? A. Yes. Q. And what were you permitted to use the logo and the image for? A. For display. Q. For what purpose?
6 7 8 9 10 11 12 13 14 15	give you a data file with the image of their logo? A. No. Q. How did they give you the logo? A. They gave me the logo. Q. What does that mean, though? What did they give you? Did it happen electronically, or did it happen did they give you a physical piece of paper? What did they give you? A. Electronically. Q. Okay. And what was it that they gave you? Was it a data file that constituted the logo? Was it a jpeg? What did they give you an image file of the logo	5 6 7 8 9 10 11 12 13 14 15 16 17 18	an image of two hands and a check, and that image is something that Up2Drive gave you? A. Yes. Q. And as far as you understood, you were permitted to use the image of the two hands and the check at CreditSmarts? A. Yes. Q. And what were you permitted to use the logo and the image for? A. For display. Q. For what purpose? A. Cashing the check. Q. Okay. Now, what is the check? A. It's an amount financed. It's a contract.
6 7 8 9 10 11 12 13 14 15 16	give you a data file with the image of their logo? A. No. Q. How did they give you the logo? A. They gave me the logo. Q. What does that mean, though? What did they give you? Did it happen electronically, or did it happen did they give you a physical piece of paper? What did they give you? A. Electronically. Q. Okay. And what was it that they gave you? Was it a data file that constituted the logo? Was it a jpeg? What did they give you an image file	5 6 7 8 9 10 11 12 13 14 15 16	an image of two hands and a check, and that image is something that Up2Drive gave you? A. Yes. Q. And as far as you understood, you were permitted to use the image of the two hands and the check at CreditSmarts? A. Yes. Q. And what were you permitted to use the logo and the image for? A. For display. Q. For what purpose? A. Cashing the check. Q. Okay. Now, what is the check?
6 7 8 9 10 11 12 13 14 15 16 17	give you a data file with the image of their logo? A. No. Q. How did they give you the logo? A. They gave me the logo. Q. What does that mean, though? What did they give you? Did it happen electronically, or did it happen did they give you a physical piece of paper? What did they give you? A. Electronically. Q. Okay. And what was it that they gave you? Was it a data file that constituted the logo? Was it a jpeg? What did they give you an image file of the logo A. Yes. Q or what did they give you? Okay.	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	an image of two hands and a check, and that image is something that Up2Drive gave you? A. Yes. Q. And as far as you understood, you were permitted to use the image of the two hands and the check at CreditSmarts? A. Yes. Q. And what were you permitted to use the logo and the image for? A. For display. Q. For what purpose? A. Cashing the check. Q. Okay. Now, what is the check? A. It's an amount financed. It's a contract. Q. And the check is something Up2Drive called drive check; is that correct?
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	give you a data file with the image of their logo? A. No. Q. How did they give you the logo? A. They gave me the logo. Q. What does that mean, though? What did they give you? Did it happen electronically, or did it happen did they give you a physical piece of paper? What did they give you? A. Electronically. Q. Okay. And what was it that they gave you? Was it a data file that constituted the logo? Was it a jpeg? What did they give you an image file of the logo A. Yes. Q or what did they give you? Okay. A. Along with XML.	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	an image of two hands and a check, and that image is something that Up2Drive gave you? A. Yes. Q. And as far as you understood, you were permitted to use the image of the two hands and the check at CreditSmarts? A. Yes. Q. And what were you permitted to use the logo and the image for? A. For display. Q. For what purpose? A. Cashing the check. Q. Okay. Now, what is the check? A. It's an amount financed. It's a contract. Q. And the check is something Up2Drive called drive check; is that correct? A. Correct.
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	give you a data file with the image of their logo? A. No. Q. How did they give you the logo? A. They gave me the logo. Q. What does that mean, though? What did they give you? Did it happen electronically, or did it happen did they give you a physical piece of paper? What did they give you? A. Electronically. Q. Okay. And what was it that they gave you? Was it a data file that constituted the logo? Was it a jpeg? What did they give you an image file of the logo A. Yes. Q or what did they give you? Okay. A. Along with XML. Q. Okay. So, was the XML also part of the	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	an image of two hands and a check, and that image is something that Up2Drive gave you? A. Yes. Q. And as far as you understood, you were permitted to use the image of the two hands and the check at CreditSmarts? A. Yes. Q. And what were you permitted to use the logo and the image for? A. For display. Q. For what purpose? A. Cashing the check. Q. Okay. Now, what is the check? A. It's an amount financed. It's a contract. Q. And the check is something Up2Drive called drive check; is that correct? A. Correct. Q. Was there something special about drive
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	give you a data file with the image of their logo? A. No. Q. How did they give you the logo? A. They gave me the logo. Q. What does that mean, though? What did they give you? Did it happen electronically, or did it happen did they give you a physical piece of paper? What did they give you? A. Electronically. Q. Okay. And what was it that they gave you? Was it a data file that constituted the logo? Was it a jpeg? What did they give you an image file of the logo A. Yes. Q or what did they give you? Okay. A. Along with XML. Q. Okay. So, was the XML also part of the logo?	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	an image of two hands and a check, and that image is something that Up2Drive gave you? A. Yes. Q. And as far as you understood, you were permitted to use the image of the two hands and the check at CreditSmarts? A. Yes. Q. And what were you permitted to use the logo and the image for? A. For display. Q. For what purpose? A. Cashing the check. Q. Okay. Now, what is the check? A. It's an amount financed. It's a contract. Q. And the check is something Up2Drive called drive check; is that correct? A. Correct. Q. Was there something special about drive checks that you needed instructions about how to
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	give you a data file with the image of their logo? A. No. Q. How did they give you the logo? A. They gave me the logo. Q. What does that mean, though? What did they give you? Did it happen electronically, or did it happen did they give you a physical piece of paper? What did they give you? A. Electronically. Q. Okay. And what was it that they gave you? Was it a data file that constituted the logo? Was it a jpeg? What did they give you an image file of the logo A. Yes. Q or what did they give you? Okay. A. Along with XML. Q. Okay. So, was the XML also part of the	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	an image of two hands and a check, and that image is something that Up2Drive gave you? A. Yes. Q. And as far as you understood, you were permitted to use the image of the two hands and the check at CreditSmarts? A. Yes. Q. And what were you permitted to use the logo and the image for? A. For display. Q. For what purpose? A. Cashing the check. Q. Okay. Now, what is the check? A. It's an amount financed. It's a contract. Q. And the check is something Up2Drive called drive check; is that correct? A. Correct. Q. Was there something special about drive

	69		71
1	Q. What was special about it? What was	1	Q. And was there any limit on which
2	different from other checks?	2	CreditSmarts customers you could use the
3	A. They have a unique deposit program that is	3	instructional images for?
4	unique to Up2Drive.	4	A. No.
5	Q. Okay. And what is unique about their	5	Q. Now, apart from the content of well,
6	deposit program?	6	let me step back.
7	A. It's simple.	7	What is the instructional information
8	Q. Okay. And what is the unique, simple	8	that's in Exhibit 14?
9	process for depositing an Up2Drive drive check?	9	A. The check item to the top right and the
10	A. The consumer and the auto dealership sign	10	availability. Again, this was a test. I did it. I
11	the check and deposit it.	11	wasn't familiar how to use the product, and I
12	Q. Where do they deposit it?	12	certainly wasn't familiar that the buttons on the
13	A. Into their bank.	13	top of the e-mail would if selected "like," would
14	Q. What is it about that that's unusual for	14	show up on Facebook.
15	auto loan checks?	15	Q. Okay.
16	A. Most auto loan contracts constitute a	16	A. New software.
17	20-page document.	17	Q. The specific logo for Up2Drive, is there
18	Q. Okay.	18	anything instructional about that logo?
19	A. Written by lawyers.	19	A. No.
20	Q. What what was it that Up2Drive well,	20	Q. And the picture of two hands and a check,
21	how was it you understood you were permitted to use	21	does that convey any instructional information?
22	the Up2Drive logo and the check image to instruct	22	A. Yes. Follow the instructions on the loan
23	auto dealers?	23	packet. Give the completed drive check to the
24	A. I had never used this Vertical Response	24	dealership to complete the purchase.
25	before, and I created this sending it to some people	25	Q. So, was that language part of the image?
	70		72
1	70 that I had spoken with to try and see how easy it	1	72 A. Image.
1 2		1 2	
	that I had spoken with to try and see how easy it		A. Image.
2	that I had spoken with to try and see how easy it was to use.	2	A. Image.Q. Okay. And the only instruction there is
2	that I had spoken with to try and see how easy it was to use. Q. The Vertical when you say how easy it	2	A. Image. Q. Okay. And the only instruction there is that you should get the instructions in the loan
2 3 4	that I had spoken with to try and see how easy it was to use. Q. The Vertical when you say how easy it was to use, do you mean Vertical Response?	2 3 4	A. Image. Q. Okay. And the only instruction there is that you should get the instructions in the loan package; is that correct?
2 3 4 5	that I had spoken with to try and see how easy it was to use. Q. The Vertical when you say how easy it was to use, do you mean Vertical Response? A. Yeah.	2 3 4 5	A. Image.Q. Okay. And the only instruction there is that you should get the instructions in the loan package; is that correct?A. Correct.
2 3 4 5 6	that I had spoken with to try and see how easy it was to use. Q. The Vertical when you say how easy it was to use, do you mean Vertical Response? A. Yeah. Q. Is Vertical Response particularly for	2 3 4 5 6	 A. Image. Q. Okay. And the only instruction there is that you should get the instructions in the loan package; is that correct? A. Correct. Q. And that that information where it
2 3 4 5 6 7	that I had spoken with to try and see how easy it was to use. Q. The Vertical when you say how easy it was to use, do you mean Vertical Response? A. Yeah. Q. Is Vertical Response particularly for creating sort of formatted e-mails that are	2 3 4 5 6 7	 A. Image. Q. Okay. And the only instruction there is that you should get the instructions in the loan package; is that correct? A. Correct. Q. And that that information where it says, Follow the instructions on the loan packet,
2 3 4 5 6 7 8	that I had spoken with to try and see how easy it was to use. Q. The Vertical when you say how easy it was to use, do you mean Vertical Response? A. Yeah. Q. Is Vertical Response particularly for creating sort of formatted e-mails that are somewhat like use images and so forth?	2 3 4 5 6 7 8	A. Image. Q. Okay. And the only instruction there is that you should get the instructions in the loan package; is that correct? A. Correct. Q. And that that information where it says, Follow the instructions on the loan packet, give the completed drive check to the dealership to
2 3 4 5 6 7 8	that I had spoken with to try and see how easy it was to use. Q. The Vertical when you say how easy it was to use, do you mean Vertical Response? A. Yeah. Q. Is Vertical Response particularly for creating sort of formatted e-mails that are somewhat like use images and so forth? A. Correct.	2 3 4 5 6 7 8	A. Image. Q. Okay. And the only instruction there is that you should get the instructions in the loan package; is that correct? A. Correct. Q. And that that information where it says, Follow the instructions on the loan packet, give the completed drive check to the dealership to complete the purchase, that was part of the image that Up2Drive gave you for use for instructing your customers; is that correct?
2 3 4 5 6 7 8 9	that I had spoken with to try and see how easy it was to use. Q. The Vertical when you say how easy it was to use, do you mean Vertical Response? A. Yeah. Q. Is Vertical Response particularly for creating sort of formatted e-mails that are somewhat like use images and so forth? A. Correct. Q. So, this you did this e-mail, in part,	2 3 4 5 6 7 8 9	A. Image. Q. Okay. And the only instruction there is that you should get the instructions in the loan package; is that correct? A. Correct. Q. And that that information where it says, Follow the instructions on the loan packet, give the completed drive check to the dealership to complete the purchase, that was part of the image that Up2Drive gave you for use for instructing your
2 3 4 5 6 7 8 9 10	that I had spoken with to try and see how easy it was to use. Q. The Vertical when you say how easy it was to use, do you mean Vertical Response? A. Yeah. Q. Is Vertical Response particularly for creating sort of formatted e-mails that are somewhat like use images and so forth? A. Correct. Q. So, this you did this e-mail, in part, as a test for this Vertical Response e-mail program?	2 3 4 5 6 7 8 9 10	A. Image. Q. Okay. And the only instruction there is that you should get the instructions in the loan package; is that correct? A. Correct. Q. And that that information where it says, Follow the instructions on the loan packet, give the completed drive check to the dealership to complete the purchase, that was part of the image that Up2Drive gave you for use for instructing your customers; is that correct?
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73 75 1 A. Not by BMW. By Up2Drive. 1 CreditSmarts that set up the Facebook page? 2 Q. By Up2Drive. Do you understand Up2Drive 2 A. Yes. 3 to be a separate company from BMW, or do you have an 3 Q. And are you the only one that was 4 understanding of exactly how those corporate 4 responsible for maintaining it? formalities are? 5 A. Yes. As you can see, there are five posts 6 6 A. No. I believe it's separate. in a two-year period. That's not a business factor. 7 Q. Okay. And Exhibit 14 was posted on the 7 Q. Is that something that you ever looked at 8 CreditSmarts Facebook page for a period of time? 8 during that two-year period? 9 A. No. 9 A. I didn't know it was there. Q. Are you telling me that you couldn't -- if 10 10 Q. Okay. You didn't know that you had a 11 you clicked the link on your -- well, if you clicked 11 Facebook page? 12 the link on the Facebook page that's Exhibit 13 for 12 A. I didn't know that the link was there. Up2Drive --13 13 Q. Did you know that you had a Facebook page? 14 A. Yes. 14 A. Yes. I set it up. 15 Q. -- what did you get? 15 Q. Did you ever look at it after you set it 16 A. You got the e-mail. 16 up? 17 Q. Okay. Is this what you got if you clicked 17 A. No. that link? Q. Do you know if there's still a link for --18 18 19 A. Correct. 19 one of those links on your Facebook page today? 20 Q. Okay. When you say "You got the e-mail," 20 MR. GARCIA: Objection. 21 21 do you mean an e-mail was sent to you; or you got a A. Not to Up2Drive. 22 Web page that contained the contents of the e-mail? 22 Q. (BY MR. PIPER) Okay. Do you still have 23 A. A Web page that contained the contents of 23 links on your Facebook page for CreditSmarts? 24 the e-mail. 24 A. Yes. 25 Q. And Exhibit 14 is the Web page that 25 Q. Which of the links do you still have for 74 76 contains the contents of your e-mail which is what 1 1 your Facebook page for CreditSmarts? you would get if you clicked the Up2Drive link on A. I don't know. I haven't reviewed it. Q. Okay. So, when you deleted the Up2Drive 3 3 the old Facebook page? A. Correct. 4 link a few weeks ago, did you delete some of the 5 Q. Okay. So, just to be clear, Exhibit 14 is 5 other links? 6 what your Web browser would show you if you clicked 6 A. I don't recall. 7 the Up2Drive link on the CreditSmarts Facebook page 7 Q. Okay. Other than the fax that's Exhibit 1 8 up to three or so weeks ago? 8 and the Facebook information that's Exhibit 13 and 9 A. Correct. 9 14 and the e-mail which is reflected in Exhibit 14, 1.0 Q. And that was the case from about October, 10 did you do anything else -- did CreditSmarts, to 2012 until sometime in early 2014; is that correct? 11 11 your knowledge, do anything else to instruct 12 A. You can see that there are five posts on 12 CreditSmarts' customers about Up2Drive specifically? 13 the Facebook page in that same two- to three-year 13 A. Not that I know of. 14 period. I'm not familiar with how to use the 14 Q. Did anyone at BMW ever communicate to you 15 Facebook software or the Vertical Response. So, 15 about the Facebook link? 16 this is more of a test than anything else. 16 A No. 17 Q. Okay. And my question was: From 17 Q. Did they ever communicate to you about the October 18th until early 2014, that link was on the 18 18 e-mail that you would send? 19 Facebook page with the link to the Web page that's 19 A. No. 20 Exhibit 14 for Up2Drive? 20 Q. Did you send a copy of that e-mail to 21 A. Along with four "Likes." 21 anyone at BMW or Up2Drive? 22 Q. Was there someone at CreditSmarts that was 22 A. No. 23 responsible for maintaining the Facebook page? 23 Q. By the way, since you draw a distinction 24 A. Myself. 24 between Up2Drive and BMW, throughout this deposition 25 Q. Okay. Are you the only one at 25 when I've asked you if you talked to someone at BMW,

1	77		70
1	77		79
	did you understand that I included Up2Drive in that?	1	to two written agreements that CreditSmarts entered
2	A. Yes.	2	into with BMW in 2012; is that correct?
3	Q. And if I refer to BMW, are you comfortable	3	A. No, that's not correct.
4	that I'm talking about the Up2Drive people	4	Q. Okay. Well, was there an agreement
5	basically?	5	entered into in 2012 between CreditSmarts to allow
6	A. It depends on the question.	6	Up2Drive access through CreditSmarts to loan
7	Q. If you're confused about that, please let	7	applications?
8	me know.	8	A. Yes.
9	MR. HAYES: Are you okay with reference?	9	Q. Was that just one agreement?
10	MR. GARCIA: Can we just clarify when you	10	A. Two agreements.
11	say "BMW," that you're talking about both you've	11	Q. There were two agreements that enabled
12	got two BMW entities as defendants.	12	that?
13	MR. PIPER: Right.	13	A. (Nods head.)
14	Q. (BY MR. PIPER) Well, are you aware of a	14	Q. Are both of those agreements still in
15	distinction between BMW Bank of North America and	15	effect to your knowledge?
16	BMW Financial Services?	16	A. To my knowledge.
17	A. No.	17	Q. And does BMW continue to receive the
18	Q. Okay. Do you know which one is the one	18	benefit of loan applications through CreditSmarts?
19	that runs Up2Drive most directly?	19	A. Up2Drive does, yes.
20	A. I do not know.	20	Q. Okay. And that hasn't changed as a result
21	Q. And although there may be corporate	21	of the fax that was sent in December, 2012?
22	formalities that I'm not aware of at this point, if	22	A. Correct.
23	I'm referring to BMW, it could be either or both of	23	Q. And that hasn't changed as a result of
24	those; but I'm talking about the people at BMW that	24	this lawsuit?
25	you dealt with with regard to Up2Drive. Has that	25	A. Correct.
	78		80
1	been your understanding of what I meant?	1	Q. Prior to this deposition today, have you
2	A. Correct.	2	ever directly communicated with any attorneys for
3	Q. Okay. And you don't know which of these	3	BMW?
4	BMW entities, BMW Bank of North America or BMW	4	A. No.
5	Financial Services, Mr. Thompson directly worked for		O Harran and a comment of the back
_		5	Q. Have you made yourself available to be
6	or whether he worked for a third company called	6	interviewed by any BMW attorneys?
7	Up2Drive? Do you know the answer to that?	6 7	interviewed by any BMW attorneys? A. No one has requested.
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7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Up2Drive? Do you know the answer to that? A. I do not. Q. Do you know whether Alex Gomez currently lives on Havenhurst Avenue in Riverside? A. I do not. Q. Do you know if he ever lived at that address? A. Yes. Q. Do you have any reason to think he's moved from that address? A. I believe he's purchased a home. Q. Since that would be at an address other than Havenhurst? A. Yes. Q. Have you spoken to him since he resigned?	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	interviewed by any BMW attorneys? A. No one has requested. Q. But have you made yourself available to that? A. Yes. Q. Okay. Are you aware of any information about the December, 2012 fax that you're aware of MR. HAYES: Objection. It's December 27th. Q. (BY MR. PIPER) Are you aware of any information about the December 27th, 2012 fax which is Exhibit 1 that is not known to BMW? A. No. MR. GARCIA: Objection. MR. PIPER: If we can mark this as the next exhibit?
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7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Up2Drive? Do you know the answer to that? A. I do not. Q. Do you know whether Alex Gomez currently lives on Havenhurst Avenue in Riverside? A. I do not. Q. Do you know if he ever lived at that address? A. Yes. Q. Do you have any reason to think he's moved from that address? A. I believe he's purchased a home. Q. Since that would be at an address other than Havenhurst? A. Yes. Q. Have you spoken to him since he resigned? A. No. Q. Has the okay. The business whereby	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	interviewed by any BMW attorneys? A. No one has requested. Q. But have you made yourself available to that? A. Yes. Q. Okay. Are you aware of any information about the December, 2012 fax that you're aware ofMR. HAYES: Objection. It's December 27th. Q. (BY MR. PIPER) Are you aware of any information about the December 27th, 2012 fax which is Exhibit 1 that is not known to BMW? A. No. MR. GARCIA: Objection. MR. PIPER: If we can mark this as the next exhibit? (Deposition Exhibit 15 was marked.) MR. PIPER: For the record, these are
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Up2Drive? Do you know the answer to that? A. I do not. Q. Do you know whether Alex Gomez currently lives on Havenhurst Avenue in Riverside? A. I do not. Q. Do you know if he ever lived at that address? A. Yes. Q. Do you have any reason to think he's moved from that address? A. I believe he's purchased a home. Q. Since that would be at an address other than Havenhurst? A. Yes. Q. Have you spoken to him since he resigned? A. No.	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	interviewed by any BMW attorneys? A. No one has requested. Q. But have you made yourself available to that? A. Yes. Q. Okay. Are you aware of any information about the December, 2012 fax that you're aware ofMR. HAYES: Objection. It's December 27th. Q. (BY MR. PIPER) Are you aware of any information about the December 27th, 2012 fax which is Exhibit 1 that is not known to BMW? A. No. MR. GARCIA: Objection. MR. PIPER: If we can mark this as the next exhibit? (Deposition Exhibit 15 was marked.)

81 83 1 Q. (BY MR. PIPER) And if you turn your A. Yes. 1 2 attention to page 9, the BMW defendants were asked 2 Q. I'm a little confused because the version 3 for each month during which any contract agreement 3 I received of this exhibit which says CreditSmarts 4 or understanding between CreditSmarts and any of the 4 has two Web sites and the pages are attached, I was 5 BMW defendants has been in effect, identify the surprised that one of the Web sites attached was --6 number of loan applications submitted through 6 seemed to be contact information for City Select 7 CreditSmarts to BMW pursuant to such -- it should 7 Auto, the plaintiffs. Was that the Web site that 8 8 you intended to provide? say contract, agreement, or understanding. 9 And then on page 10 there's a table 9 A. No. 10 that shows months and applications submitted through 10 Q. Okay. So, the first page that has the 11 CreditSmarts. And is -- is (sic) the information 11 mail AOL.com is not a Web site for CreditSmarts and 12 contained in this table, to your knowledge, appear 12 was not the attachment that you intended to include 13 accurate as to the number of applications that were 13 with this; is that correct? 14 submitted to Up2Drive through CreditSmarts? 14 A. Correct. 15 15 A. Yes. Q. Okay. Is what you intended to include as 16 Q. And have applications continued to be 16 your second attachment the LinkedIn page that you submitted in 2014 to Up2Drive? 17 referred to earlier? 17 18 18 A. No. 19 Q. And that includes applications that were 19 Q. What was the second Web site that you 20 submitted after December, 2012, correct? 2.0 intended to include? 21 A. Correct. 2.1 A. The AutoWebExperts site. 22 Q. And that includes applications that were 22 Q. Well, is that what's here? 23 submitted since August, 2013; is that correct? 23 A. Yes. 24 A. Yes. 24 Q. What were the two Web sites that you 25 Q. Have you ever had any communication where 25 intended to attach? One was Auto Web sites -- one 82 84 BMW told you that because of the fax that was sent 1 1 was AutoWeb -on December 27th, 2012, they no longer wanted to 2 A. Experts. 3 receive applications through CreditSmarts? 3 Q. -- Experts.com? A. And the other is CreditSmarts.com. 4 4 5 5 Q. Have they ever told you that they wanted Q. CreditSmarts.com. Okay. 6 to filter out applications that might have resulted 6 A. This Web site for City Select was myself 7 because of the fax that was sent on December 27th, 7 conveying to Bill Hayes that City Select is 8 2012? 8 advertising BMW on their Web site. 9 9 A. No. Q. Okay. But you did not -- you conveyed 10 10 Q. Give me just a second. this to Bill Hayes but not for the purpose of MR. PIPER: Can we mark this as the next showing what CreditSmarts --11 11 12 exhibit? A. Correct. I conveyed that to Bill Hayes to 12 13 (Deposition Exhibit 16 was marked.) 13 show him that City Select is using BMW's name in 14 Q. (BY MR. PIPER) By the way, did you ever 14 their search engine and optimization, branding. 15 see those BMW answers before that was the previous 15 Q. And is that something that's shown on this 16 exhibit? 16 page? 17 17 A. No. If you right click on that page, 18 18 Q. Do you know if you saw them before they you'll see the source; and it shows that they are 19 19 using BMW brand to drive customer traffic to their were filed? 20 A. No, I did not. 20 Web site. 21 Q. Okay. Or served, I should say. 21 Q. Okay. So --2.2 So, after BMW finalized them, you got 22 MR. GARCIA: I'm sorry. Can you repeat 23 a copy? 23 back the two Web sites that he listed? One was 24 24 A. Yes. CreditSmarts.com, and there was a preceding one. 25 25 Q. Do you recognize Exhibit 16? THE COURT REPORTER: AutoWebExperts.

85 87		85
RCIA: Thank you. 1 property, goods, or services of CreditSmarts?	1	1 MR. GARCIA: Thank you.
YES: May I just so I'm clear, 2 A. It's my contention that it provides	2	2 MR. HAYES: May I just so I'm clear,
	3	3 Sean, the AutoWebExperts.com and CreditSmarts.com
eb pages that you attempted to give to 4 Q. Okay. And does that mean that it is a	4	4 are the two Web pages that you attempted to give to
5 document that promotes, advertises, announces, or	5	5 Mr. Piper?
TNESS: Yes. 6 solicits property, goods, or services of	6	6 THE WITNESS: Yes.
PER: Okay. And, you know, you want 7 CreditSmarts?	7	7 MR. PIPER: Okay. And, you know, you want
mended response 8 A. It's an informational document.	8	8 to just do an amended response
YES: Yes. 9 Q. Okay. I guess what I'm trying to ask is:	9	9 MR. HAYES: Yes.
PER: so that the record is clear	10	10 MR. PIPER: so that the record is clear
this request when you identified it in the first	11	11 on that?
YES: Which one is missing? 12 sentence of your response?	12	MR. HAYES: Which one is missing?
PER: There is Auto well 13 A. Yes.	13	MR. PIPER: There is Auto well
TNESS: CreditSmarts.com. 14 Q. And was that sent by or on behalf of	14	14 THE WITNESS: CreditSmarts.com.
PER: Yeah. 15 CreditSmarts?	15	15 MR. PIPER: Yeah.
YES: Okay. 16 A. Yes.	16	16 MR. HAYES: Okay.
PER: If you could mark that as the 17 Q. By facsimile transmission?	17	MR. PIPER: If you could mark that as the
18 A. Yes.	18	18 next exhibit?
tion Exhibit 17 was marked.) 19 Q. Towards the end you say, Exhibit A was	19	19 (Deposition Exhibit 17 was marked.)
R. PIPER) Do you recognize 20 sent by a former employee without CreditSmarts'	20	Q. (BY MR. PIPER) Do you recognize
21 knowledge.	21	21 Exhibit 17?
for the record, although this 22 In fact, when the fax was sent by or	22	And, for the record, although this
n stating it's plaintiff's requests 23 on behalf of CreditSmarts, it was sent by a current	23	has the caption stating it's plaintiff's requests
able says it's plaintiff's requests, 24 employee, correct?	24	and the preamble says it's plaintiff's requests,
anding that this is after we sent 25 A. Correct.	25	it's my understanding that this is after we sent
86 88		86
	1	
sion of that, this is the response that 1 Q. He only became a former employee many		
behalf of CreditSmarts with 1 Q. He only became a former employee many months later?	2	1 the Word version of that, this is the response that
behalf of CreditSmarts with 1 Q. He only became a former employee many months later? 3 A. Correct.	2 3	the Word version of that, this is the response that was typed on behalf of CreditSmarts with
sion of that, this is the response that behalf of CreditSmarts with answers. at also your understanding of Q. He only became a former employee many months later? A. Correct. Q. And he was the office manager of	2 3 4	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers.
sion of that, this is the response that behalf of CreditSmarts with answers. 2	2 3 4 5	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers. Is that also your understanding of
ion of that, this is the response that behalf of CreditSmarts with answers. at also your understanding of ument is? Q. He only became a former employee many months later? A. Correct. Q. And he was the office manager of CreditSmarts at the time he sent the fax? A. Correct.	2 3 4 5 6	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers. Is that also your understanding of what this document is?
Display the control of that, this is the response that behalf of CreditSmarts with answers. 1 Q. He only became a former employee many months later? 2 months later? 3 A. Correct. 4 Q. And he was the office manager of creditSmarts at the time he sent the fax? 6 A. Correct. 9 ut the one that actually typed the 7 Q. And, therefore, CreditSmarts' office	2 3 4 5 6 7	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers. Is that also your understanding of what this document is? A. Yes.
Display the control of that, this is the response that behalf of CreditSmarts with answers. I Q. He only became a former employee many months later? A. Correct. Q. And he was the office manager of the companient of the compan	2 3 4 5 6 7 8	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers. Is that also your understanding of what this document is? A. Yes. Q. Are you the one that actually typed the
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Display the first of that, this is the response that behalf of CreditSmarts with answers. at also your understanding of the first of the first occurrence	2 3 4 5 6 7 8 9	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers. Is that also your understanding of what this document is? A. Yes. Q. Are you the one that actually typed the answers into this document? A. I don't recall. Q. Okay. Could I turn your attention to
Definition of that, this is the response that behalf of CreditSmarts with answers. at also your understanding of under its? A. Correct. A. Correct. Could I turn your attention to 10 became a former employee many months later? A. Correct. Q. And he was the office manager of CreditSmarts at the time he sent the fax? A. Correct. Q. And, therefore, CreditSmarts' office manager knew that the fax was being sent? A. Correct. Q. And, therefore, CreditSmarts' office manager knew that the fax was being sent? A. Correct. Q. So, the only one who didn't know it was being sent was you, right?	2 3 4 5 6 7 8 9 10	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers. Is that also your understanding of what this document is? A. Yes. Q. Are you the one that actually typed the answers into this document? A. I don't recall. Q. Okay. Could I turn your attention to
Definition of that, this is the response that behalf of CreditSmarts with answers. at also your understanding of the ument is? Definition of that, this is the response that behalf of CreditSmarts with answers. A. Correct. Q. And he was the office manager of the correct. Q. And he was the time he sent the fax? A. Correct. Q. And, therefore, CreditSmarts' office manager knew that the fax was being sent? A. Correct. Q. And, therefore, CreditSmarts' office manager knew that the fax was being sent? A. Correct. Q. So, the only one who didn't know it was being sent was you, right? A. Correct.	2 3 4 5 6 7 8 9 10 11	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers. Is that also your understanding of what this document is? A. Yes. Q. Are you the one that actually typed the answers into this document? A. I don't recall. Q. Okay. Could I turn your attention to Request No. 1 which is well, the pages aren't
Definition of that, this is the response that behalf of CreditSmarts with answers. at also your understanding of the ument is? Definition of that, this is the response that behalf of CreditSmarts with answers. A. Correct. Q. And he was the office manager of the correct. Q. And he was the time he sent the fax? A. Correct. Q. And, therefore, CreditSmarts' office manager knew that the fax was being sent? A. Correct. Q. And, therefore, CreditSmarts' office manager knew that the fax was being sent? A. Correct. Q. So, the only one who didn't know it was being sent was you, right? A. Correct.	2 3 4 5 6 7 8 9 10 11 12	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers. Is that also your understanding of what this document is? A. Yes. Q. Are you the one that actually typed the answers into this document? A. I don't recall. Q. Okay. Could I turn your attention to Request No. 1 which is well, the pages aren't numbered; but it's the fourth page of the document
Display the formula of that, this is the response that behalf of CreditSmarts with answers. In the one that actually typed the this document? Could I turn your attention to the fourth page of the document thents Requested." I tirs the fourth page of the document then the formula of the f	2 3 4 5 6 7 8 9 10 11 12 13 14	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers. Is that also your understanding of what this document is? A. Yes. A. Yes. C. Are you the one that actually typed the answers into this document? A. I don't recall. C. Okay. Could I turn your attention to Request No. 1 which is well, the pages aren't numbered; but it's the fourth page of the document under "Documents Requested."
Definition of that, this is the response that behalf of CreditSmarts with answers. at also your understanding of ument is? The request asks for each different 1	2 3 4 5 6 7 8 9 10 11 12 13 14	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers. Is that also your understanding of what this document is? A. Yes. C. Are you the one that actually typed the answers into this document? A. I don't recall. Q. Okay. Could I turn your attention to Request No. 1 which is well, the pages aren't numbered; but it's the fourth page of the document under "Documents Requested." A. Okay.
Definition of that, this is the response that behalf of CreditSmarts with answers. at also your understanding of tument is? A. Correct. A. Correct. Could I turn your attention to the which is well, the pages aren't to the fourth page of the document that promotes, advertises, The request asks for each different to the sent that actions it is the fourth page of that action of the document that promotes, advertises, Description of that, this is the response that the formula became a former employee many months later? A. Correct. Q. And he was the office manager of the document of the fax? A. Correct. Q. And, therefore, CreditSmarts' office manager knew that the fax was being sent? A. Correct. Q. So, the only one who didn't know it was being sent was you, right? A. Correct. MR. GARCIA: Objection. Q. (BY MR. PIPER) If you turn to the response to Request No. 5, which is a long response. I think ocument that promotes, advertises,	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers. Is that also your understanding of what this document is? A. Yes. A. Yes. C. Are you the one that actually typed the answers into this document? A. I don't recall. C. Okay. Could I turn your attention to Request No. 1 which is well, the pages aren't numbered; but it's the fourth page of the document under "Documents Requested." A. Okay. C. Okay. The request asks for each different
Definition of that, this is the response that behalf of CreditSmarts with answers. at also your understanding of the ument is? A. Correct. B. Manager knew that the fax was being sent? A. Correct. Could I turn your attention to the pages aren't the fourth page of the document that promotes, advertises, or solicits any property, goods, or there's a reference that says, Discovery from	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers. Is that also your understanding of what this document is? A. Yes. A. Yes. C. Are you the one that actually typed the answers into this document? A. I don't recall. C. Okay. Could I turn your attention to Request No. 1 which is well, the pages aren't numbered; but it's the fourth page of the document under "Documents Requested." A. Okay. C. Okay. The request asks for each different form of any document that promotes, advertises,
Dehalf of CreditSmarts with solution of that, this is the response that behalf of CreditSmarts with solution of the comment is? A. Correct. A. Cor	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers. Is that also your understanding of what this document is? A. Yes. A. Yes. C. Are you the one that actually typed the answers into this document? A. I don't recall. C. Okay. Could I turn your attention to Request No. 1 which is well, the pages aren't numbered; but it's the fourth page of the document under "Documents Requested." A. Okay. C. Okay. The request asks for each different form of any document that promotes, advertises, announces, or solicits any property, goods, or
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Dehalf of CreditSmarts with answers. at also your understanding of ument is? A. Correct. 4. Q. And he was the office manager of CreditSmarts at the time he sent the fax? A. Correct. 4. Correct. 6. A. Correct. 7. Q. And, therefore, CreditSmarts' office manager knew that the fax was being sent? 8. M. Correct. 9. A. Correct. 9. A. Correct. 10. And, therefore, CreditSmarts' office manager knew that the fax was being sent? 11. A. Correct. 12. A. Correct. 13. M. Correct. 14. Q. So, the only one who didn't know it was being sent was you, right? 15. A. Correct. 16. A. Correct. 17. Q. So, the only one who didn't know it was being sent was you, right? 18. A. Correct. 19. A. Correct. 10. And, therefore, CreditSmarts' office manager knew that the fax was being sent? 10. A. Correct. 11. Deing sent was you, right? 12. A. Correct. 13. M. GARCIA: Objection. 14. Q. (BY MR. PIPER) If you turn to the response to Request No. 5, which is a long response. I think it's on page 8. Towards the end of that answer there's a reference that says, Discovery from Plaintiff's current and former employees including Troy Casey, Anthony Salkauski, Deborah Shadow, entence of the response is Exhibit A. 10. And he was the office manager of CreditSmarts at the time he sent the fax? A. Correct. Q. And, therefore, CreditSmarts' office manager knew that the fax was being sent? A. Correct. A. Correct. Q. So, the only one who didn't know it was being sent was you, right? A. Correct. A. Correct. A. Correct. In MR. GARCIA: Objection. In MR. GA	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers. Is that also your understanding of what this document is? A. Yes. A. Yes. C. Are you the one that actually typed the answers into this document? A. I don't recall. C. Okay. Could I turn your attention to Request No. 1 which is well, the pages aren't numbered; but it's the fourth page of the document under "Documents Requested." A. Okay. C. Okay. The request asks for each different form of any document that promotes, advertises, announces, or solicits any property, goods, or services of CreditSmarts and which was sent by or on behalf of CreditSmarts by facsimile transmission;
Dehalf of CreditSmarts with answers. at also your understanding of unent is? A. Correct. A. C	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers. Is that also your understanding of what this document is? A. Yes. A. Yes. C. Are you the one that actually typed the answers into this document? A. I don't recall. C. Okay. Could I turn your attention to Request No. 1 which is well, the pages aren't numbered; but it's the fourth page of the document under "Documents Requested." A. Okay. C. Okay. The request asks for each different form of any document that promotes, advertises, announces, or solicits any property, goods, or services of CreditSmarts and which was sent by or on behalf of CreditSmarts by facsimile transmission; and the first sentence of the response is Exhibit A
Dehalf of CreditSmarts with answers. at also your understanding of unent is? A. Correct. A. C	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers. Is that also your understanding of what this document is? A. Yes. A. Yes. C. Are you the one that actually typed the answers into this document? A. I don't recall. Q. Okay. Could I turn your attention to Request No. 1 which is well, the pages aren't numbered; but it's the fourth page of the document under "Documents Requested." A. Okay. Q. Okay. The request asks for each different form of any document that promotes, advertises, announces, or solicits any property, goods, or services of CreditSmarts and which was sent by or on behalf of CreditSmarts by facsimile transmission; and the first sentence of the response is Exhibit A attached to plaintiff's complaint.
behalf of CreditSmarts with answers. at also your understanding of ument is? but the one that actually typed the this document? recall. Could I turn your attention to If which is well, the pages aren't the tit's the fourth page of the document thents Requested.' The request asks for each different coument that promotes, advertises, or solicits any property, goods, or editSmarts and which was sent by or on ditSmarts by facsimile transmission; entence of the response is Exhibit A aintiff's complaint. behalf of CreditSmarts with and he was the office manager of Correct. Q. And, therefore, CreditSmarts' office manager knew that the fax was being sent? A. Correct. Q. So, the only one who didn't know it was being sent was you, right? A. Correct. MR. GARCIA: Objection. Q. (BY MR. PIPER) If you turn to the response to Request No. 5, which is a long response. I think it's on page 8. Towards the end of that answer there's a reference that says, Discovery from Plaintiff's current and former employees including Troy Casey, Anthony Salkauski, Deborah Shadow, Rhonda Banks, Salina Singleton and Sara aintiff's complaint. 20 Rhonda Banks, Salina Singleton and Sara and discussions by CreditSmarts with Plaintiff, aintiff's complaint, which is marked	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	the Word version of that, this is the response that was typed on behalf of CreditSmarts with CreditSmarts' answers. Is that also your understanding of what this document is? A. Yes. A. Yes. C. Are you the one that actually typed the answers into this document? A. I don't recall. C. Okay. Could I turn your attention to Request No. 1 which is well, the pages aren't numbered; but it's the fourth page of the document under "Documents Requested." A. Okay. C. Okay. The request asks for each different form of any document that promotes, advertises, announces, or solicits any property, goods, or services of CreditSmarts and which was sent by or on behalf of CreditSmarts by facsimile transmission; and the first sentence of the response is Exhibit A attached to plaintiff's complaint. Is it your understanding that

89 91 Plaintiff's buyers who used CreditSmarts' services. 1 1 specific information that any of them actually did 2 2 Are you the one that was the source have any communications with CreditSmarts; is that 3 of that information? 3 correct? 4 A. Yes. 4 A. Yes, I do. Q. And what led you to believe that -- have Q. What is that information? 6 you ever had any personal dealings with any of the 6 A. Someone at that auto dealership spoke with 7 individuals that are named there as current and 7 two persons at CreditSmarts on two different 8 former employees of City Select? 8 occasions. 9 9 Q. Well, first of all, assuming that's true, 10 Q. Do you have any specific information that 10 is it possible that there was an employee at City 11 any of those named individuals had any dealings with 11 Select who talked to CreditSmarts that is not named 12 CreditSmarts? 12 in this interrogatory? A. Yes. 13 13 A. It is possible. Absolutely. Q. Okay. What information -- which of those 14 14 Q. So, you don't have any specific 15 individuals do you have information about them 15 information that any of these people talked to 16 having dealings with CreditSmarts? 16 CreditSmarts but you think someone at City Select 17 A. I do not know which. 17 talked to CreditSmarts and these are the only names Q. What information do you have that would 18 18 you can come up with who might have done that at 19 lead you to -- well, where did you get those names? 19 this point? 20 A. Those are employees that worked for City 20 A. Correct. 21 Select during the time that there was contact 21 Q. Okay. What is your basis for saying that 22 between CreditSmarts staff members and the auto 22 BMW, Liberal Finance, Excel Credit Union had 23 23 business relations with City Select? dealership. 24 Q. Okay. And where did you get those names? 24 A. Those are lenders that are local to New 25 A. I researched them. 25 Jersey and that lend to BMW should be Up2Drive and 90 92 1 Q. And where did you find those names in your 1 those are lenders that were in direct negotiations 2 research? 2 with CreditSmarts. 3 3 Q. Okay. So, what's your basis for saying A. Public records. Q. What public records? 4 that Up2Drive had direct negotiations with City 5 5 A. Master Files. Select? 6 Q. What is Master Files? 6 A. Our CreditSmarts salesperson would have A. Master Files is a database research firm. 7 7 spoken to the representative at City Select 8 I also used the Internet. 8 regarding the available options to them. 9 9 Q. And is it fair to say you were looking for Q. I see. These are the three lenders that 10 10 the names of any employees of City Select that you would have extended credit in New Jersey had City 11 11 Select submitted applications; is that correct? A. Correct. 12 A. No. That would have been present during 12 13 the time that CreditSmarts had two contacts with 13 Q. And other than the fact that had City Select submitted applications through CreditSmarts, 14 that dealership. 14 15 Q. Okay. So, you went through Master Files 15 that these would have been the lenders that might 16 and the Internet and tried to identify any City 16 have received the applications, do you have any 17 Select employee that worked there during the time 17 other reason to believe that City Select did 18 that your records show there was communication 18 business with any of these three entities? 19 between someone at CreditSmarts and City Select --19 A. I do not know. I don't work for City 20 20 Select. I'd like to find out. A. Correct. Q. -- Auto? 21 21 Q. Okay. Okay. 2.2 A. Uh-huh. 22 MR. PIPER: Mark this as the next exhibit. 23 Q. And other than the fact that you 23 (Deposition Exhibit 18 was marked.) 24 24 identified that these were people who were employed MR. GARCIA: I'd like to object to the 25 25 by City Select during that time period, you have no introduction of this exhibit as possibly lacking

93 95 context. I believe this was attached to an e-mail. A. Yes. 1 1 2 MR. PIPER: Okay. 2 Q. What is this document? 3 Q. (BY MR. PIPER) Do you know if you've ever 3 A. The instructional page for Up2Drive that 4 seen this before? Did you get the exhibit? 4 is inside of CreditSmarts.com. A. The image or the document? 5 Q. Okav. 6 Q. The image. The image. Yeah. You can put 6 A. How did you obtain it? 7 the other one away for now as far as I'm concerned. 7 Q. It was produced by the BMW defendants on 8 A. Yes, yes. 8 Friday. 9 Q. Okay. Is this the image of the Up2Drive 9 A. Okay. Very good. 10 logo that you were talking about earlier? 10 Q. You were concerned that I had somehow 11 A. It appears to be. 11 hacked into your computer? 12 MR. GARCIA: Objection. 12 A. Well, that would be against the law. 13 Q. (BY MR. PIPER) Do you know if that came to 13 Q. Right. And you were concerned that that might have happened. It did not happen, I assure 14 vou as an attachment to an e-mail? 14 15 15 A. I don't recall. Q. Okay. 16 16 A. Or that possibly the auto dealership --17 MR. PIPER: And let me just state for the the plaintiff accessed this with a -- which they 17 18 record with respect to your objection that the way 18 should. 19 the documents were produced, it wasn't entirely 19 Q. Okay. So, is this something that is clear what -- to me what -- at least in the hurry of accessible through -- to CreditSmarts' customers 2.0 2.0 through the CreditSmarts interface? 21 getting it, what was attached to what; but I did see 21 22 that I got one page that had the Up2Drive logo on 22 A. Yes. Including City Select. 23 23 it. Okay. Q. Is this something that was provided -- how 24 Q. (BY MR. PIPER) Regardless of whether this 24 did this document come to be created? How did --25 is the specific file that you received, did the 25 how did CreditSmarts get this document? Did it 94 96 image of the Up2Drive logo that you received 1 1 create the document? 2 essentially look like this? 2 A. I believe I did. 3 A. Yes. 3 Q. Okay. And when would you have created 4 4 Q. Do you recall whether it was the size -this document? 5 5 was it -- was your image something that if you A. June of 2012. 6 printed it out, came out as an 8-and-a-half-by-11 6 Q. Okay. Did BMW know you were creating this 7 page? 7 document? 8 A. I don't know. 8 A. Yes. 9 MR. PIPER: Can we mark this as the next 9 Q. Did you share it with BMW? 10 10 exhibit? (Deposition Exhibit 19 was marked.) 11 11 Q. And did they have any problem with your MR. MILSTEIN: Off the record. promoting this information on the CreditSmarts Web 12 12 13 (Recess taken from 12:03 p.m. to 12:04 13 interface? 14 14 A. No. p.m.) 15 MR. MILSTEIN: Back on the record. 15 MR. GARCIA: Objection. 16 MR. GARCIA: I'd like to object to this as 16 Q. (BY MR. PIPER) Now, explain to me the 17 well. 17 CreditSmarts Web interface. How does -- if I were 18 MR. PIPER: Okay. What's your objection? 18 CreditSmarts' customer, how would I access this 19 19 information? MR. GARCIA: The same. To the extent that there's an e-mail providing context. 20 20 A. An auto dealership would use a user name 21 THE WITNESS: This is not an e-mail. 21 and pass code, three-step process, access 22 MR. GARCIA: To the extent that this is an 22 CreditSmarts.com. If they fulfilled a credit 23 attachment to an e-mail. 23 application, sent that credit application to 24 24 Q. (BY MR. PIPER) Do you recognize this Up2Drive through CreditSmarts.com and received an 25 25 document, sir? approval, they would then have access to this

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1	document.	1	Q. (BY MR. PIPER) You're referring to the
2	Q. Okay. Is there any information on this	2	third line that the name of Up2Drive is spelled with
3	page that is information that you gained from a	3	two letters instead of T-o rather than the number
4	source other than Up2Drive?	4	2?
5	A. No.	5	A. Yes.
6	Q. Okay. And, again, the Up2Drive logo here	6	Q. If you keep moving down to the fifth line
7	is an image that, before you created this, you had	7	where it says, 110 percent of KBB retail value, is
8	been provided by Up2Drive?	8	it your understanding that KBB refers to Kelley Blue
9	A. Correct.	9	Book?
10	Q. And the hands with the check and the	10	A. Yes.
11	instructions at the bottom is information is an	11	Q. And 110 percent of Kelley Blue Book retail
12	image that had been provided to you by Up2Drive?	12	value means the maximum loan-to-value rate that
13	A. Correct.	13	Up2Drive accepts; is that correct?
14	Q. Before you created this?	14	A. Correct.
15	A. Correct.	15	Q. And that's the same on Exhibit 1 and on
16	Q. And did you have an understanding at that	16	Exhibit 19, correct?
17	point about what they thought you would do with	17	A. Correct.
18	those images?	18	Q. The next line says "2006 and newer
19	A. Yes. We would CreditSmarts would	19	vehicles," and what that means is that Up2Drive at
20	display this for instructions on how to cash the	20	that time was available for 2006 and later models
21	Up2Drive check.	21	BMW models; is that correct?
22	Q. Can you go back to Exhibit 1, probably at	22	A. Correct.
23	the bottom of your pile?	23	MR. GARCIA: Objection.
24	A. Yes.	24	Q. (BY MR. PIPER) And that information is the
25	Q. Okay. Under first of all, do you know	25	same on Exhibit 1 and on Exhibit 19; is that
	98		100
1	where the car on Exhibit 1 where that image came	1	correct?
2	from?	2	A. Correct. That's actually incorrect. It's
3	A. I do not.	3	available to all vehicle manufacturers.
4	Q. Did you talk to Alex Gomez about that?	4	Q. So, Up2Drive will finance even if it's not
5	A. Yes.	5	a BMW manufacturer?
6	Q. Did he tell you anything about that?	6	A. Correct.
7	A. He did not remember.	7	 Q. And that's what was incorrect in the
8	Q. The second the first line of type on	8	question I asked, right?
9	the fax in the body after the fax header says "BMW	9	A. Correct.
10	Bank of North America Up2Drive." The name BMW Bank	10	Q. But if we now rephrase it that the
11	of North America is included on Exhibit 19; is that	11	reference to 2006 and newer vehicles means that at
11	correct?	12	that time Up2Drive was available to finance
12			
12 13	A. Correct.	13	vehicles, assuming they met all the other criteria,
12 13 14	A. Correct.Q. And the Up2Drive logo is the same on both	14	that were model year 2006 or later. That's what
12 13 14 15	A. Correct. Q. And the Up2Drive logo is the same on both Exhibit 19 and Exhibit 1; is that correct?	14 15	that were model year 2006 or later. That's what that refers to, correct?
12 13 14 15	A. Correct.Q. And the Up2Drive logo is the same on bothExhibit 19 and Exhibit 1; is that correct?A. Correct.	14 15 16	that were model year 2006 or later. That's what that refers to, correct? A. Correct.
12 13 14 15 16	 A. Correct. Q. And the Up2Drive logo is the same on both Exhibit 19 and Exhibit 1; is that correct? A. Correct. MR. GARCIA: Objection. 	14 15 16 17	that were model year 2006 or later. That's what that refers to, correct? A. Correct. MR. GARCIA: Objection.
12 13 14 15 16 17	 A. Correct. Q. And the Up2Drive logo is the same on both Exhibit 19 and Exhibit 1; is that correct? A. Correct. MR. GARCIA: Objection. Q. (BY MR. PIPER) The first line the 	14 15 16 17 18	that were model year 2006 or later. That's what that refers to, correct? A. Correct. MR. GARCIA: Objection. Q. (BY MR. PIPER) And that's the same on
12 13 14 15 16 17 18	 A. Correct. Q. And the Up2Drive logo is the same on both Exhibit 19 and Exhibit 1; is that correct? A. Correct. MR. GARCIA: Objection. Q. (BY MR. PIPER) The first line the second line I'm sorry. The 	14 15 16 17 18 19	that were model year 2006 or later. That's what that refers to, correct? A. Correct. MR. GARCIA: Objection. Q. (BY MR. PIPER) And that's the same on Exhibit 1 and on Exhibit 19?
12 13 14 15 16 17 18 19 20	 A. Correct. Q. And the Up2Drive logo is the same on both Exhibit 19 and Exhibit 1; is that correct? A. Correct. MR. GARCIA: Objection. Q. (BY MR. PIPER) The first line the second line I'm sorry. The A. He spelled it wrong. 	14 15 16 17 18 19 20	that were model year 2006 or later. That's what that refers to, correct? A. Correct. MR. GARCIA: Objection. Q. (BY MR. PIPER) And that's the same on Exhibit 1 and on Exhibit 19? A. Correct.
12 13 14 15 16 17 18 19 20 21	 A. Correct. Q. And the Up2Drive logo is the same on both Exhibit 19 and Exhibit 1; is that correct? A. Correct. MR. GARCIA: Objection. Q. (BY MR. PIPER) The first line the second line I'm sorry. The A. He spelled it wrong. THE WITNESS: I looked at this document. 	14 15 16 17 18 19 20 21	that were model year 2006 or later. That's what that refers to, correct? A. Correct. MR. GARCIA: Objection. Q. (BY MR. PIPER) And that's the same on Exhibit 1 and on Exhibit 19? A. Correct. Q. And where it says "Up to 90,000 miles,"
12 13 14 15 16 17 18 19 20 21 22	 A. Correct. Q. And the Up2Drive logo is the same on both Exhibit 19 and Exhibit 1; is that correct? A. Correct. MR. GARCIA: Objection. Q. (BY MR. PIPER) The first line the second line I'm sorry. The A. He spelled it wrong. THE WITNESS: I looked at this document. MR. HAYES: Huh? 	14 15 16 17 18 19 20 21 22	that were model year 2006 or later. That's what that refers to, correct? A. Correct. MR. GARCIA: Objection. Q. (BY MR. PIPER) And that's the same on Exhibit 1 and on Exhibit 19? A. Correct. Q. And where it says "Up to 90,000 miles," you understand that that means that vehicles are
12 13 14 15 16 17 18 19 20 21 22 23	 A. Correct. Q. And the Up2Drive logo is the same on both Exhibit 19 and Exhibit 1; is that correct? A. Correct. MR. GARCIA: Objection. Q. (BY MR. PIPER) The first line the second line I'm sorry. The A. He spelled it wrong. THE WITNESS: I looked at this document. MR. HAYES: Huh? THE WITNESS: He spelled it wrong. Not 	14 15 16 17 18 19 20 21 22 23	that were model year 2006 or later. That's what that refers to, correct? A. Correct. MR. GARCIA: Objection. Q. (BY MR. PIPER) And that's the same on Exhibit 1 and on Exhibit 19? A. Correct. Q. And where it says "Up to 90,000 miles," you understand that that means that vehicles are eligible for Up2Drive if all the other criteria are
12 13 14 15 16 17 18 19 20 21	 A. Correct. Q. And the Up2Drive logo is the same on both Exhibit 19 and Exhibit 1; is that correct? A. Correct. MR. GARCIA: Objection. Q. (BY MR. PIPER) The first line the second line I'm sorry. The A. He spelled it wrong. THE WITNESS: I looked at this document. MR. HAYES: Huh? 	14 15 16 17 18 19 20 21 22	that were model year 2006 or later. That's what that refers to, correct? A. Correct. MR. GARCIA: Objection. Q. (BY MR. PIPER) And that's the same on Exhibit 1 and on Exhibit 19? A. Correct. Q. And where it says "Up to 90,000 miles," you understand that that means that vehicles are

101 103 A. Correct. A. Yes. 1 2 2 Q. And that's the same on Exhibit 1 and on When did you have that discussion with 3 Exhibit 19? 3 him? 4 A. Correct. 4 A. When we launched -- CreditSmarts launched MR. GARCIA: Objection. Up2Drive. 6 6 Q. (BY MR. PIPER) And, in fact, other than Q. What was the discussion you had with 7 the misspelling of the Up2Drive, all the information 7 Mr. Gomez when CreditSmarts launched Up2Drive about 8 8 his communications with BMW? on Exhibit 1 is information that a customer of 9 CreditSmarts theoretically could have obtained 9 A. Any contact with Up2Drive goes through 10 10 through Exhibit 19 -myself or Chad Simmons. 11 A. Correct. 11 Q. Okay. And when about was that 12 Q. -- is that correct? 12 conversation? Was that before you signed the Master 13 And that was all information that was 13 Services Agreement? 14 provided by Up2Drive to CreditSmarts to assist 14 A. It would have been June, 2012 when the 15 15 CreditSmarts in instructing its customers? product was launched. Q. Okay. Other than that discussion in June, 16 A. Correct. I believe this information can 16 17 17 be found anywhere on the Internet. 2012, did you have any discussions with Mr. Gomez 18 about communicating with Up2Drive? 18 Q. Have you ever looked at the Up2Drive Web 19 19 A. Yes. site? 20 Q. What other discussions did you have with 20 A. No. him about communicating with Up2Drive? 21 Q. Have you actually looked at this 21 22 information somewhere on the Internet and seen this 22 A. That they were not a lender that would 23 information somewhere on the Internet? 23 participate in program guideline updates. 24 24 A. No. Q. When did you have that discussion with --25 MR. GARCIA: Objection. 25 A. June of 2012. 102 104 Q. (BY MR. PIPER) So, your statement that 1 1 Q. Okay. And was that the same discussion or this can be found on the Internet is speculation; is 2 a different discussion? 3 3 that correct? A. Yes. Same discussion. 4 Q. So, you had one discussion where you said A. Correct. Q. Okay. 5 5 that Alex Gomez should not -- the only ones at 6 MR. PIPER: We've gone about another hour. 6 CreditSmarts who could talk to Up2Drive were Sean 7 Does anybody want to take a break now or soon? 7 Ryan or Chad Simmons and that BMW would not 8 THE COURT REPORTER: I need to plug in my 8 participate in program guideline updates? 9 machine. 9 A. Uh-huh. 1.0 10 MR. PIPER: We'll take a break. Q. Did you ever have any conversation other (Recess taken from 12:13 p.m. to 12:21 11 11 than that one conversation -- did you have any other 12 conversations with Mr. Gomez about those subject p.m.) 12 13 Q. (BY MR. PIPER) In your initial 13 14 A. Not that I can recall. 14 conversation with Mr. Gomez about his sending of 15 Exhibit 1, did -- in the face-to-face discussion, 15 Q. Okay. What gave rise to that discussion 16 did he tell you why he thought it was appropriate to 16 in June, 2012? 17 send the fax? 17 A. The Up2Drive product launch. 18 A. No. 18 Q. Okay. And who was present at that 19 Q. Did you discuss with him whether he had 19 discussion? 20 communicated with Up2Drive before sending the fax? 20 A. Myself and Alex Gomez. 21 A. He has not. 21 Q. No one besides the two of you? 22 Q. Did you discuss that in the first 22 A. Not that I recall. 23 conversation with him? 23 Q. Did you talk about anything else in that 24 discussion other than the question of him not 24 A. No. 25 25 Q. Did you ever discuss that with him? talking to Up2Drive and them not participating in

	105		107
1	product guideline updates?	1	down?
2	A. Yes.	2	A. No. Make a loan decision.
3	Q. What else did you talk about?	3	Q. Okay. I see. So, in other words, with
4	A. They are now available for auto	4	the Up2Drive program there's no human decision made
5	dealerships to select as their lending option.	5	at the Up2Drive end? It's done by their
6	Q. Were there other lenders that Mr. Gomez	6	A. Correct.
7	was allowed to talk to?	7	Q computer algorithms, as you understand
8	A. Yes.	8	it?
9	Q. So, why specifically did you instruct	9	MR. GARCIA: Objection.
10	him why did you make well, did you make the	10	A. Correct.
11	decision that you didn't want Alex Gomez talking to	11	Q. (BY MR. PIPER) Okay. So, was what Jake
12	Up2Drive?	12	Thompson was telling you, that there was nobody at
13	A. Yes.	13	the Up2Drive and to talk to about why they were
14	Q. And why did you make that decision?	14	making loan decisions?
15	A. Because Up2Drive requested limited	15	A. No.
16	contact.	16	MR. GARCIA: Objection.
17	Q. And how did Up2Drive make that request?	17	Q. (BY MR. PIPER) Well, given that it was all
18	A. Through phone.	18	being done by computer
19	Q. On the phone. Okay. Who at Up2Drive made	19	A. It was specific to marketing.
20	that request to you?	20	Q. So that marketing decisions would go
21	A. I believe it was Jake.	21	through you or Chad Simmons?
22	Q. Did they ever specifically say that they	22	A. That would go through Jake Thompson.
23	didn't want Alex Gomez working on Up2Drive matters?	23	Q. All marketing decisions about Up2Drive?
24	A. No.	24	A. Correct.
25	Q. Okay. What was it that Jake Thompson said	25	Q. So, what did Mr. Thompson tell you about
1	106 to you about BMW wanting limited contact with	1	108 marketing decisions?
2	Up2Drive?	2	A. All imagery and marketing decisions needed
3	A. That we needed CreditSmarts and	3	to go through Jake Thompson.
4	Up2Drive needed a streamlined electronic process.	4	Q. Okay. And what else did he tell you about
5	Q. What does a streamlined electronic process	5	
	•)	marketing?
6	IIIEaii?	6	marketing? A. That's it.
6 7	mean? A. Data is posted in a post response		A. That's it.
	A. Data is posted in a post response	6	A. That's it.Q. Okay. Did you feel that when you sent the
7	A. Data is posted in a post response environment via XML. The auto dealership generates	6 7	A. That's it. Q. Okay. Did you feel that when you sent the e-mail that that was compliant with his
7 8	A. Data is posted in a post response environment via XML. The auto dealership generates a credit application. That data is parsed and	6 7 8	A. That's it. Q. Okay. Did you feel that when you sent the e-mail that that was compliant with his instructions?
7 8 9	A. Data is posted in a post response environment via XML. The auto dealership generates	6 7 8 9	A. That's it. Q. Okay. Did you feel that when you sent the e-mail that that was compliant with his
7 8 9 10	A. Data is posted in a post response environment via XML. The auto dealership generates a credit application. That data is parsed and identified through a set of filters that is a	6 7 8 9	A. That's it. Q. Okay. Did you feel that when you sent the e-mail that that was compliant with his instructions? MR. GARCIA: Objection.
7 8 9 10 11	A. Data is posted in a post response environment via XML. The auto dealership generates a credit application. That data is parsed and identified through a set of filters that is a pass/fail for the Up2Drive minimum requirements; and	6 7 8 9 10 11	A. That's it. Q. Okay. Did you feel that when you sent the e-mail that that was compliant with his instructions? MR. GARCIA: Objection. MR. HAYES: Objection. Could you what
7 8 9 10 11 12	A. Data is posted in a post response environment via XML. The auto dealership generates a credit application. That data is parsed and identified through a set of filters that is a pass/fail for the Up2Drive minimum requirements; and if it passes, the auto dealership then has the	6 7 8 9 10 11 12	A. That's it. Q. Okay. Did you feel that when you sent the e-mail that that was compliant with his instructions? MR. GARCIA: Objection. MR. HAYES: Objection. Could you what e-mail are you referring to?
7 8 9 10 11 12	A. Data is posted in a post response environment via XML. The auto dealership generates a credit application. That data is parsed and identified through a set of filters that is a pass/fail for the Up2Drive minimum requirements; and if it passes, the auto dealership then has the option of selecting Up2Drive along with other	6 7 8 9 10 11 12 13	A. That's it. Q. Okay. Did you feel that when you sent the e-mail that that was compliant with his instructions? MR. GARCIA: Objection. MR. HAYES: Objection. Could you what e-mail are you referring to? Q. (BY MR. PIPER) When you sent the e-mail
7 8 9 10 11 12 13	A. Data is posted in a post response environment via XML. The auto dealership generates a credit application. That data is parsed and identified through a set of filters that is a pass/fail for the Up2Drive minimum requirements; and if it passes, the auto dealership then has the option of selecting Up2Drive along with other lenders.	6 7 8 9 10 11 12 13	A. That's it. Q. Okay. Did you feel that when you sent the e-mail that that was compliant with his instructions? MR. GARCIA: Objection. MR. HAYES: Objection. Could you what e-mail are you referring to? Q. (BY MR. PIPER) When you sent the e-mail about Up2Drive, did you believe that that needed to
7 8 9 10 11 12 13 14	A. Data is posted in a post response environment via XML. The auto dealership generates a credit application. That data is parsed and identified through a set of filters that is a pass/fail for the Up2Drive minimum requirements; and if it passes, the auto dealership then has the option of selecting Up2Drive along with other lenders. Q. And is that a different electronic process	6 7 8 9 10 11 12 13 14	A. That's it. Q. Okay. Did you feel that when you sent the e-mail that that was compliant with his instructions? MR. GARCIA: Objection. MR. HAYES: Objection. Could you what e-mail are you referring to? Q. (BY MR. PIPER) When you sent the e-mail about Up2Drive, did you believe that that needed to be reviewed by Jake Thompson beforehand?
7 8 9 10 11 12 13 14 15	A. Data is posted in a post response environment via XML. The auto dealership generates a credit application. That data is parsed and identified through a set of filters that is a pass/fail for the Up2Drive minimum requirements; and if it passes, the auto dealership then has the option of selecting Up2Drive along with other lenders. Q. And is that a different electronic process than what you have for your other lenders?	6 7 8 9 10 11 12 13 14 15	A. That's it. Q. Okay. Did you feel that when you sent the e-mail that that was compliant with his instructions? MR. GARCIA: Objection. MR. HAYES: Objection. Could you what e-mail are you referring to? Q. (BY MR. PIPER) When you sent the e-mail about Up2Drive, did you believe that that needed to be reviewed by Jake Thompson beforehand? A. No, I didn't.
7 8 9 10 11 12 13 14 15 16	A. Data is posted in a post response environment via XML. The auto dealership generates a credit application. That data is parsed and identified through a set of filters that is a pass/fail for the Up2Drive minimum requirements; and if it passes, the auto dealership then has the option of selecting Up2Drive along with other lenders. Q. And is that a different electronic process than what you have for your other lenders? A. Yes.	6 7 8 9 10 11 12 13 14 15 16	A. That's it. Q. Okay. Did you feel that when you sent the e-mail that that was compliant with his instructions? MR. GARCIA: Objection. MR. HAYES: Objection. Could you what e-mail are you referring to? Q. (BY MR. PIPER) When you sent the e-mail about Up2Drive, did you believe that that needed to be reviewed by Jake Thompson beforehand? A. No, I didn't. Q. Why was that not subject to his
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7 8 9 10 11 12 13 14 15 16 17 18	A. Data is posted in a post response environment via XML. The auto dealership generates a credit application. That data is parsed and identified through a set of filters that is a pass/fail for the Up2Drive minimum requirements; and if it passes, the auto dealership then has the option of selecting Up2Drive along with other lenders. Q. And is that a different electronic process than what you have for your other lenders? A. Yes. Q. So, what would be different? Like A. It's the same electronic process. Some	6 7 8 9 10 11 12 13 14 15 16 17 18	A. That's it. Q. Okay. Did you feel that when you sent the e-mail that that was compliant with his instructions? MR. GARCIA: Objection. MR. HAYES: Objection. Could you what e-mail are you referring to? Q. (BY MR. PIPER) When you sent the e-mail about Up2Drive, did you believe that that needed to be reviewed by Jake Thompson beforehand? A. No, I didn't. Q. Why was that not subject to his restrictions that he had to approve all marketing? A. I was testing out a new service, and I
7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. Data is posted in a post response environment via XML. The auto dealership generates a credit application. That data is parsed and identified through a set of filters that is a pass/fail for the Up2Drive minimum requirements; and if it passes, the auto dealership then has the option of selecting Up2Drive along with other lenders. Q. And is that a different electronic process than what you have for your other lenders? A. Yes. Q. So, what would be different? Like A. It's the same electronic process. Some lenders underwrite and process their loans manually	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. That's it. Q. Okay. Did you feel that when you sent the e-mail that that was compliant with his instructions? MR. GARCIA: Objection. MR. HAYES: Objection. Could you what e-mail are you referring to? Q. (BY MR. PIPER) When you sent the e-mail about Up2Drive, did you believe that that needed to be reviewed by Jake Thompson beforehand? A. No, I didn't. Q. Why was that not subject to his restrictions that he had to approve all marketing? A. I was testing out a new service, and I knew the recipients.
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. Data is posted in a post response environment via XML. The auto dealership generates a credit application. That data is parsed and identified through a set of filters that is a pass/fail for the Up2Drive minimum requirements; and if it passes, the auto dealership then has the option of selecting Up2Drive along with other lenders. Q. And is that a different electronic process than what you have for your other lenders? A. Yes. Q. So, what would be different? Like A. It's the same electronic process. Some lenders underwrite and process their loans manually on CreditSmarts.com. Up2Drive receives the data	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. That's it. Q. Okay. Did you feel that when you sent the e-mail that that was compliant with his instructions? MR. GARCIA: Objection. MR. HAYES: Objection. Could you what e-mail are you referring to? Q. (BY MR. PIPER) When you sent the e-mail about Up2Drive, did you believe that that needed to be reviewed by Jake Thompson beforehand? A. No, I didn't. Q. Why was that not subject to his restrictions that he had to approve all marketing? A. I was testing out a new service, and I knew the recipients. Q. Do you know if Alex Gomez was aware of
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Data is posted in a post response environment via XML. The auto dealership generates a credit application. That data is parsed and identified through a set of filters that is a pass/fail for the Up2Drive minimum requirements; and if it passes, the auto dealership then has the option of selecting Up2Drive along with other lenders. Q. And is that a different electronic process than what you have for your other lenders? A. Yes. Q. So, what would be different? Like A. It's the same electronic process. Some lenders underwrite and process their loans manually on CreditSmarts.com. Up2Drive receives the data electronically.	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. That's it. Q. Okay. Did you feel that when you sent the e-mail that that was compliant with his instructions? MR. GARCIA: Objection. MR. HAYES: Objection. Could you what e-mail are you referring to? Q. (BY MR. PIPER) When you sent the e-mail about Up2Drive, did you believe that that needed to be reviewed by Jake Thompson beforehand? A. No, I didn't. Q. Why was that not subject to his restrictions that he had to approve all marketing? A. I was testing out a new service, and I knew the recipients. Q. Do you know if Alex Gomez was aware of that e-mail?
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Data is posted in a post response environment via XML. The auto dealership generates a credit application. That data is parsed and identified through a set of filters that is a pass/fail for the Up2Drive minimum requirements; and if it passes, the auto dealership then has the option of selecting Up2Drive along with other lenders. Q. And is that a different electronic process than what you have for your other lenders? A. Yes. Q. So, what would be different? Like A. It's the same electronic process. Some lenders underwrite and process their loans manually on CreditSmarts.com. Up2Drive receives the data electronically. Q. Okay. What would you mean when you say	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. That's it. Q. Okay. Did you feel that when you sent the e-mail that that was compliant with his instructions? MR. GARCIA: Objection. MR. HAYES: Objection. Could you what e-mail are you referring to? Q. (BY MR. PIPER) When you sent the e-mail about Up2Drive, did you believe that that needed to be reviewed by Jake Thompson beforehand? A. No, I didn't. Q. Why was that not subject to his restrictions that he had to approve all marketing? A. I was testing out a new service, and I knew the recipients. Q. Do you know if Alex Gomez was aware of that e-mail? A. He was not.

109 111 1 Q. Okay. Do you know whether Alex Gomez ever 1 MR. HAYES: Yes, you -- read back the --2 2 looked at the CreditSmarts Facebook page? just so we can get it correct, Jon. Sorry to 3 A. I don't know. 3 interrupt. 4 Q. And you have no knowledge about why Alex 4 MR. PIPER: Sure. 5 Gomez thought it was a good idea to send an 5 (Whereupon the requested portion of advertisement -- or an informational update of 6 6 testimony was read back.) Q. (BY MR. PIPER) And you never had any 7 Up2Drive information in December, 2012? 7 8 A. I do not know. 8 conversation with him about that subject matter, 9 Q. And did you have a discussion with 9 correct? 10 Mr. Thompson about CreditSmarts' program guideline 10 A. No. 11 updates? 11 MR. HAYES: Fair enough. 12 A. No. 12 MR. PIPER: I didn't mean to imply that it 13 Q. Did you tell him that one of the things 13 was. He said whatever you do, don't fax that. That 14 CreditSmarts could do would be to send out a program 14 never happened. guideline update for Up2Drive? 15 Q. (BY MR. PIPER) In that conversation with 15 16 A. No. 16 Mr. Thompson in August of 2013 where he told you 17 Q. Did he tell you specifically that he 17 that his lawyers didn't want him to talk to you, did didn't want any program guideline updates done for 18 18 he tell you that this fax was unauthorized, meaning 19 Up2Drive? 19 Exhibit 1? 20 A. He said specifically this is the only 20 A. Yes. 21 21 Q. What did he say about that? document that should be presented to an auto 22 dealership. 22 A. He said he'd never seen it before. 23 Q. Okay. "This," you picked up and referred 23 Q. Okay. Is that the exact words he used, 24 to --24 that he'd never seen it before? 25 A. Exhibit 19. 25 A. Yes. 110 112 Q. And had you already shown him Exhibit 19 1 1 Q. And did he use the words "unauthorized"? 2 before he approved that? 2 A. No. 3 A. Yes. 3 Q. Okay. So, other than telling you, This is 4 4 the first time I've seen that, what did he say? Did Q. Did Mr. Thompson talk to you at all about 5 5 the use of fax advertising? he say he was upset about that? What do you recall 6 6 him saying in that conversation? 7 Q. Did you tell him that fax advertising was 7 A. He said he was asked by his counsel if he 8 something that CreditSmarts did? 8 had authorized that. He had told them no. 9 9 A. No. Q. And was there anything else that he told 10 Q. Did he -- did he talk to you about whether you about that in that conversation? 10 you could fax that Exhibit 19 to CreditSmarts' 11 11 customers? Q. Okay. Did he tell you that CreditSmarts 12 12 13 13 had in any way breached its agreement with BMW by 14 sending this fax? Q. After --14 15 MR. HAYES: Objection. There's no --15 MR. HAYES: Objection. The testimony is, 16 nothing in the record or testimony that Exhibit 19 16 is that he said he wasn't supposed to speak about 17 was faxed. That's an e-mail. You may be referring 17 this. The response to that was he didn't tell me 18 to Exhibit 1. 18 anything else was discussed. So, now, you're asking 19 19 other questions whether they were discussed. The MR. PIPER: Actually Exhibit 19 is not the e-mail either. That's the thing. 20 answer is there was nothing else discussed. 20 21 MR. HAYES: The image. 21 Q. (BY MR. PIPER) Well, in fact, in addition 22 MR. PIPER: -- that's embedded in the --22 to telling you that he couldn't talk to you 23 MR. HAYES: It wasn't faxed to anybody. 23 according to his attorneys and that you didn't 24 24 MR. PIPER: Right. Well, I didn't say it discuss anything else, you did, in fact, talk about 25 25 was but -some other things in that call such as the fact that

	113		115
1	he had spoken to his attorneys and told them that	1	A. It would have come from an attorney to my
2	this fax	2	attorney my counsel.
3	A. Yes.	3	Q. So, BMW didn't directly send that notice
4	Q was not authorized?	4	to you?
5	So, among the other things that you	5	A. No.
6	talked about, did you discuss whether CreditSmarts	6	Q. Okay. And other than the fact that
7	had breached its agreement with Up2Drive by sending	7	counsel just did us the favor of telling us about
8	this fax?	8	that, did you know that there was such a notice?
9	A. No. We discussed that all further	9	A. No.
10	communication needed to be through his attorneys,	10	MR. PIPER: I don't mind if you have an
11	and we'd let them work it out.	11	objection to my questions, but I do object to your
12	Q. So, in that discussion with Jake Thompson,	12	adding facts into the record since you've told me
13	he did not say to you that you had or may have	13	that he's the witness and so on and so forth.
14	violated your agreement with Up2Drive?	14	Q. (BY MR. PIPER) Do you know the last
15	MR. GARCIA: Objection.	15	paragraph of Exhibit 1 states that "To be removed
16	A. He said, Let the attorneys work it out.	16	from this list, please call 1(800)915-2571,
17	Q. (BY MR. PIPER) Did he specifically say	17	Extension 40410 or fax this document back to
18	that the attorneys would need to work out whether	18	(888)343-9903. Please be sure to include the number
19	you had breached your agreement with Up2Drive?	19	to be removed. Thank you."
20	A. No.	20	Do you recognize that paragraph apart
21	Q. Was there any discussion in that	21	from the fact that it's contained in Exhibit 1?
22	conversation about your agreement with Up2Drive?	22	Have you seen that in other faxes that CreditSmarts
23	A. There were no legal discussions. That's	23	sent?
24	for counsel.	24	A. Yes.
25	Q. Has anyone at BMW ever directly told you	25	Q. Is that something you drafted?
1	or communicated to you in any way that you have	1	116 A. No.
2	violated your agreement with BMW? And I'm saying	2	Q. Do you know who drafted it?
3	has a BMW employee personally communicated directly	3	A. Yes.
4	to you, not through attorneys, about whether you	4	Q. Who drafted it?
5	violated your agreement with BMW?	5	A. Patrick Ryan.
6	A. BMW and myself have had no communication	6	Q. Who is Patrick Ryan?
7	post that conversation with Jake Thompson.	7	A. My brother.
8	Q. Okay. All that's happened is the	8	Q. And what is his relationship to
9	continuing submission of the applications through	9	CreditSmarts?
10	the CreditSmarts portal?	10	A. He was the CreditSmarts office manager.
11	Correct. MR. HAYES: For the record, BMW's counsel	11	Q. At what time?
12 13	did notify CreditSmarts that there has been a breach	12	A. From 2007 to 2011.
14	of the agreement.	13	Q. Okay. Did you have any discussions with
15	THE WITNESS: Okay.	15	him about preparing that paragraph? A. No.
16	MR. PIPER: But that's but that was	16	
17	you're not correcting his testimony. You're just	17	Q. Do you know why he prepared that paragraph?
18	adding a fact for my benefit?	18	A. Yes.
	adding a laction my bollont:		Q. Why did he prepare that paragraph?
19	MR. HAYES: No. I'm just adding a fact	1 19	w. YYIIY UIU IIU DIUDAID IIIAI DAIAUIADII!
19 20	MR. HAYES: No. I'm just adding a fact	19	
20	that CreditSmarts has received notice of a breach.	20	A. We believed it was the law.
20 21	that CreditSmarts has received notice of a breach. Q. (BY MR. PIPER) Did you personally receive	20 21	A. We believed it was the law.Q. So, this was prepared in order to comply
20 21 22	that CreditSmarts has received notice of a breach. Q. (BY MR. PIPER) Did you personally receive that notice?	20 21 22	A. We believed it was the law.Q. So, this was prepared in order to comply with laws about fax advertising?
20 21	that CreditSmarts has received notice of a breach. Q. (BY MR. PIPER) Did you personally receive that notice? A. I assume I wouldn't.	20 21 22 23	A. We believed it was the law.Q. So, this was prepared in order to comply with laws about fax advertising?A. Correct.
20 21 22 23	that CreditSmarts has received notice of a breach. Q. (BY MR. PIPER) Did you personally receive that notice?	20 21 22	A. We believed it was the law.Q. So, this was prepared in order to comply with laws about fax advertising?

A. From my brother. Q. And, again, your brother was Patrick Ryan? A. Correct. Q. And do you know where he got his understanding? A. I do not. Q. Okay. White is the number that's 18000167-5271. Extension 404107 A. That's a number that belongs to WestFax. Q. Okay. And how about the (888)343-9903? A. That's a number that belongs to WestFax. Q. Okay. And how about the (888)343-9903? A. That's a number that belongs to WestFax. Q. Okay. And how about the (888)343-9903? A. That's a number that belongs to CreditSmarts Q. Okay. And how about the (888)343-9903? A. That's a number that belongs to CreditSmarts Q. Okay. B that the main fax number for CreditSmarts? A. Ves. D. Okay. Oblid you ever get any requests for removal of that fax number? Removal of that fax number? Removal of that fax number? A. Yes. D. Oyo you know whether you did? A. Yes. A. Yes. A. Yes. C. And doly ou ever a how to be a fax in the fax number is automatic, the Removal of the fax number of CreditSmarts? A. Yes. C. Okay. So, if somebody faxed a request for removal or faxed this document back to the C. CreditSmarts fax machine or fax number — first of all, was three a fax machine or or was t just by en-mail? A. Its an e-fax. C. Okay. So, if somebody faxed a request for removal or faxed this document back to the C. Okay. So, if somebody faxed a request for removal or faxed this document back to the C. Okay. So, if somebody faxed a request for removal or faxed this document back to the C. Okay. So, if somebody faxed a request for removal or faxed this document back to the C. Okay. So, if somebody faxed a request for removal or faxed this document back to the C. Okay. So, if somebody faxed a request for removal or faxed this document back to the C. Okay. So, if somebody faxed a request for removal or faxed this document back to the C. Okay. So, if somebody faxed a request for removal or faxed this document back to the C. Okay. So, if somebody faxed a request for removal or faxed this document back to the C. Okay. So, if somebody faxed a request for remov		117		119
2 Q. And, again, your brother was Patrick Ryan? 3 A. Correct. 4 Q. And do you know where he got his 5 understanding? 5 A. I do not. 6 A. I do not. 7 Q. Okay. What is the number that 5 the 1 fax number for 1 fax	1	A. From my brother.	1	A. I'm confused.
A. Correct. Q. And do you know where he got his understanding? A. I do not. Q. Okay. What is the number that's 1800)915-2571. Extension 40410? A. That's a number that belongs to WestFax. Q. Okay. And how about the (888)343-9903? A. That's a number that belongs to WestFax. Q. Okay. Sa number that belongs to WestFax. Q. Okay. Well, did you ever — did you ever — aid you ever — we faxing to send letters at CreditSmarts, for example of the thing to the CreditSmarts? A. Yes. Q. Okay. Bit at the main fax number for 11 understood you 12 asid was the main fax number for 22 A. Yes. Q. Well, I'm talking about the one that's the 23 asid was the main fax number for CreditSmarts which I understood you 3 asid was the main fax number for CreditSmarts which I understood you 3 asid was the main fax number for CreditSmarts which I understood you 3 all, was there a fax machine; or was it just by e-mail? A. Yes. Q. Okay. So, if somebody faxed a request for removed or faxed this document back to the CreditSmarts eriax number, what happened? Would that automatically delete the number from your database? A. No. The office number - first of all, was there a fax machine; or was it just by e-mail? A. No. The office number refered the same and materials and an experiment of the same and materials		· · · · · · · · · · · · · · · · · · ·	2	
4 WesiFax for that kind of fax? 5 understanding? 6 A. I do not. 7 Q. Okay. What is the number that's 1 (800)915-5271, Exhension 40410? 9 A. That's a number that belongs to WestFax. 10 Q. Okay. And how about the (888)343-9903? 11 A. That's a number that belongs to WestFax. 12 CreditSmarts. 13 Q. Okay. And how about the (888)343-9903? 14 CreditSmarts. 15 A. Yes. 16 Q. Okay. Unit work that the main fax number for removal of that fax number? 17 removal of that fax number? 18 A. I - I assume so. 19 Q. Do you know whether you did? 19 Q. Do you know whether you did? 20 MR, GARCIA: Objection. 21 A. Yes. 22 Q. (BY MR. PIPER) Do you know who who handled those? 23 handled those? 24 A. The number is automatic, the 25 (800)915-2571. 18 Q. Well, I'm talking about the one that's the fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts with I understood you said was the main fax number for CreditSmarts or and the dealer? 26 (800)915-2571. 27 Q. Well, I'm talking about the one that's the fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts? 28 A. Yes. 29 e-mail? 30 Q. Ckay. So, if somebody faxed a request for removal or faxed this document back to the fare document back to the CreditSmarts e-fax number, what happened? Would that automatically delete the number from your database? 31 Q. E-fax. Okay. So, if somebody faxed this document back to the CreditSmarts e-fax number, what happened? Would that automatically delete the number from your database? 31 A. No. The office number - the office manager? 32 A. No. The office number - the office manager would then call the 800 number for WestFax and enter the code. 33 Q. Okay. And is this opt-out number pretty much, to your knowledge, something that was included whenever faxes were sent through WestFax for the fax? 34 A. Yes. 35 Q. Did CreditSmarts ever use WestFax for a representation of the code. 36 Q. Okay. And is this opt-	3		3	
5 A. No. 6 A. I do not. 7 Q. Okay. What is the number that's 8 1(800)915-2571, Extension 40410? 9 A. That's a number that belongs to WestFax. 10 Q. Okay. And how about the (888)343-9903? 11 A. That's a number that belongs to WestFax. 12 CreditSmarts. 13 Q. Okay. Is that the main fax number for CreditSmarts. 14 C. Okay. Is that the main fax number for CreditSmarts. 15 A. Yes. 16 Q. Okay. Is that the main fax number for removal of that fax number? 17 removal of that fax number? 18 A. I - I assume so. 19 Q. Do you know whether you did? 19 Q. Do you know whether you did? 20 MR. GARCIA: Objection. 21 A. Yes. 22 Q. (BY MR. PIPER) Do you know who - who handled those? 24 A. The number is automatic, the 25 (800)915-2571. 118 1 Q. Well, I'm talking about the one that's the fax number is alid was the main fax number for CreditSmarts what to a lender or an auto dealer? 24 A. Yes. 25 Q. Okay. So, if somebody faxed a request for removal or faxed this document back to the CreditSmarts e-fax number. First of all, was there a fax machine; or was it just by e-mail? 10 A. It's an e-fax. 11 Q. E4x. Okay. So, if somebody faxed this happened? Would that automatically delete the number fror OrditSmarts e-fax number for Edismarts? 15 A. No. 16 Q. Okay. And is this opt-out number pretty and menter the code. 17 Q. Okay. And is this opt-out number pretty and menter the code. 28 A. Yes. 29 Q. Okay. And is this opt-out number pretty and menter the code. 29 Q. Okay. And is this opt-out number pretty and menter the code. 20 Q. What is Exhibit 20? 21 A. Yes. 22 Q. (BY MR. PIPER) Do you know who - who whenever faxes were sent through WestFax for mexic at his prepared whenever faxes were sent through WestFax for mexic at his prepared whenever faxes were sent through WestFax for the fax? 29 A. I would be the prepared this and the sent and	4	Q. And do you know where he got his	4	
7 CreditSmarts' business purposes other than sending large numbers of faxes through WestFax? 8 1 (800)915-2571, Extension 40410? 9 A. That's a number that belongs to WestFax. 10 Q. Okay. And how about the (888)343-9903? 11 A. That's a number that belongs to WestFax. 12 CreditSmarts. 13 Q. Okay. Is that the main fax number for 12 CreditSmarts. 14 C. D. Okay. Is that the main fax number for 14 CreditSmarts? 15 A. Yes. 16 Q. Okay. Did you ever get any requests for 16 removal of that fax number? 17 removal of that fax number? 18 A. I – I assume so. 19 Q. Do you know whether you did? 19 Q. Do you know whether you did? 20 MR. GARCIA: Objection. 21 A. Yes. 22 Q. (BY MR. PIPER) Do you know who – who 23 handled those? 24 A. The number is automatic, the 24 fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts? 4 A. Yes. 11 Q. Well, i'm talking about the one that's the 4 fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts? 4 A. Yes. 10 Q. Okay. So, if somebody faxed a request for 16 removal or faxed this document back to the 16 creditSmarts at machine or fax number – first of 18 all, was there a fax machine; or was it just by 19 e-mail? 19 A. It san e-fax. 110 Q. Ckay. So, if somebody faxed this document back to the 16 creditSmarts at machine or fax number – first of 19 charms of the creditSmarts at machine or fax number of the first of 19 charms of the creditSmarts at machine or fax number in the first of 19 charms of the creditSmarts at machine or fax number in the first of 19 charms of of	5		5	A. No.
18 diagn numbers of faxes through WestFax? 10 Q. Okay. And how about the (888)343-9903? 11 A. That's a number that belongs to WestFax. 12 CreditSmarts. 13 Q. Okay. Is that the main fax number for CreditSmarts? 14 CreditSmarts? 15 A. Yes. 16 Q. Okay. Did you ever get any requests for removal of that fax number? 17 removal of that fax number? 18 A. I - I assume so. 19 Q. Do you know whether you did? 20 MR. GARCIA: Objection. 21 A. Yes. 22 Q. (BY MR. PIPER) Do you know who - who alanded those? 24 A. The number is automatic, the fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts? 4 A. Yes. 5 Q. Okay. So, if somebody faxed a request for removal or faxed this document back to the creditSmarts fax machine; or was it just by e-mail? 5 Q. Ckay. So, if somebody faxed a request for removal or faxed this document back to the creditSmarts fax machine; or was it just by e-mail? 10 A. It's an e-fax. 11 Q. E-fax. Okay. So, if somebody faxed this happened? Would that automatically delete the number from your database? 15 A. No. The office number - the office manager would then call the 800 number for WestFax and enter the code. 18 Q. Okay. A lot joet to large numbers. 29 Q. Kay. Mean in through ever - did you ever use faxing to example? 20 Lefax of yes. 21 A. No. 22 Q. Okay. So, if somebody faxed a request for that purpose? 22 A. Yes. 23 Q. Okay. So, if somebody faxed a request for removal or faxed this document back to the creditSmarts e-fax number. In the fax? 30 A. It would be the cutoff where you would go to WestFax for the fax? 41 A. It's an e-fax. 42 Q. Ckay. Meaning - what's micro? 43 A. It's an e-fax. 44 Q. Okay. So, what would be the securation. 45 Q. Okay. So, what would be the securation. 46 Q. Okay. So, what would be speculation. 47 Q. Okay. So, what would be speculation. 48 Q. Okay. So, what would be speculation. 49 Q. Okay. So, what would be the securation. 40 Q. Okay. So, what would be speculation. 40 Q. Okay. So, what would be speculation. 41 Q. Okay. Reason that han	6	A. I do not.	6	Q. Did you ever have to use a fax in
8 I large numbers of faxes through WestFax? 9 A. That's a number that belongs to WestFax. 10 Q. Okay. And how about the (888)343-9903? 11 A. That's a number that belongs to 12 CreditSmarts? 13 Q. Okay. Is that the main fax number for 14 CreditSmarts? 15 A. Yes. 16 Q. Okay. Did you ever get any requests for 17 removal of that fax number? 18 A. I - I assume so. 19 Q. Dy oyu know whether you did? 20 MR. GARCIA: Objection. 21 A. Yes. 22 Q. (BY MR. PIPER) Do you know who who 23 handled those? 24 A. The number is automatic, the 25 (800)915-2571. 118 1 Q. Well, I'm talking about the one that's the 26 gax number for CreditSmarts which I understood you 3 said was the main fax number for CreditSmarts? 4 A. Yes. 5 Q. Okay. So, if somebody faxed a request for 6 removal or faxed this document back to the 7 CreditSmarts fax machine; or was it just by 9 e-mail? 1 Q. E-fax. Okay. So, if somebody faxed this 1 happened? Would that automatically delete the 14 number from your database? 17 and enter the code. 18 Q. Okay. A. Is an e-fax. 19 Q. Okay. Men, if the thing about the one that's the 19 Q. Well, I'm talking about the one that's the 20 G. Okay. So, if somebody faxed a request for 21 removal or faxed this document back to the 22 control of a program guide update, and most of those are micro. 23 Q. And would be the cutoff where you would go to WestFax for the fax? 24 A. It would be for a program guide update, and most of those are micro. 25 Q. Okay. So, if somebody faxed this document back to the creditSmarts e-fax number, what happened? Would that automatically delete the 24 number from your database? 25 Q. Okay. And is this opt-out number pretty 26 much, to your knowledge, something that was included whenever faxes were sent through WestFax for any through WestFax for the fax? 27 A. Yes. 28 Q. Did CreditSmarts e-ver use WestFax for any through WestFax for the fax? 29 A. I would have been the office manager? 21 A. Yes. 22 Q. And is that your signature on the agreement? 22 A. Yes. 23 Q. Did CreditSmarts e-ver use WestFax f	7	Q. Okay. What is the number that's	7	CreditSmarts' business purposes other than sending
10 Q. Okay. And how about the (888)343-9903? 11 A. That's a number that belongs to 12 CreditSmarts. 13 Q. Okay. Is that the main fax number for 14 CreditSmarts? 15 A. Yes. 16 Q. Okay. Did you ever get any requests for 17 removal of that fax number? 18 A. I - I assume so. 19 Q. Do you know whether you did? 20 MR. GARCIA: Objection. 21 A. Yes. 22 Q. (BW MR. PIPER) Do you know who who 23 handled those? 24 A. The number is automatic, the 25 (800)915-2571. 118 12 Q. Well, I'm talking about the one that's the 26 fax number for CreditSmarts which I understood you 3 said was the main fax number of roreditSmarts? 4 A. Yes. 5 Q. Okay. So, if somebody faxed a request for 16 removal of raxed this document back to the 7 CreditSmarts fax machine; or was it just by 29 e-mail? 10 A. It's an e-fax. 11 Q. E-fax. Okay. So, if somebody faxed a repuest for 11 and the promoter of the CreditSmarts e-fax number of row west it just by 3 denote that load the collection. 19 G. Okay. So, if somebody faxed a request for 19 removal of raxed this document back to the 10 CreditSmarts fax machine; or was it just by 20 e-mail? 21 document back to the CreditSmarts e-fax number, what happened? Would that automatically delete the 21 aumaper would then call the 800 number for WestFax and enter the code. 22 Q. Okay. And is this opt-out number pretty 23 q. Okay. And is this opt-out number pretty 24 much, to your knowledge, something that was included whenever faxes were sent through WestFax for the agreement? 25 Q. Okay. And is this opt-out number pretty 26 whenever faxes were sent through WestFax for tax and enter the code. 27 Q. Okay. And is this opt-out number pretty 28 Q. Okay. And is this opt-out number pretty 39 Q. Okay. And is this opt-out number and the size of a micro fax through WestFax for the fax? 30 Q. Okay. And is this opt-out number and the file and the size of a micro fax through designed. 31 Q. Okay. And is this opt-out number and the file and the fax through designed the agreement. 30 Q. Okay. And is this opt-out number and the	8		8	large numbers of faxes through WestFax?
11	9	A. That's a number that belongs to WestFax.	9	A. I object to large numbers.
CreditSmarts 12	10	Q. Okay. And how about the (888)343-9903?	10	Q. Okay. Well, did you ever did you ever
13 Q. Okay. Is that the main fax number for CreditSmarts? 14 Q. Okay. Did you ever get any requests for removal of that fax number? 15 A. Yes. 16 Q. Okay. Did you ever get any requests for removal of that fax number? 17 removal of that fax number? 18 A. I – I assume so. 19 Q. Do you know whether you did? 20 MR. GARCIA: Objection. 21 A. Yes. 22 Q. (BY MR. PIPER) Do you know who – who 23 handled those? 24 A. The number is automatic, the 24 (800)915-2571. 118 1 Q. Well, I'm talking about the one that's the fax number for CreditSmarts which I understood you 3 said was the main fax number for CreditSmarts? 4 A. Yes. 5 Q. Okay. So, if somebody faxed a request for removal or faxed this document back to the CreditSmarts ax machine or fax number — first of all, was there a fax machine; or was it just by e-mail? 10 A. It's an e-fax. 11 Q. E-fax. Okay. So, if somebody faxed this document back to the CreditSmarts e-fax number, what happened? Would that automatically delete the number from your database? 15 A. No. The office number — the office manager would then call the 800 number for WestFax and enter the code. 16 Q. Okay. And is this opt-out number pretty much, to your knowledge, something that was included whenever faxes were sent through WestFax for the agreement? 24 A. Yes. 25 Q. Okay. And is this opt-out number pretty much, to your knowledge, something that was included whenever faxes were sent through WestFax for the agreement? 24 A. Yes. 25 Q. Okay. And is this opt-out number pretty and enter the code. 26 Q. Okay. And is this opt-out number pretty anything other than large fax broadcast? That is, anything other than larg	11	A. That's a number that belongs to	11	use faxing to send letters at CreditSmarts, for
14 CreditSmarts? 15 A. Yes. 16 Q. Okay. Did you ever get any requests for removal of that fax number? 17 removal of that fax number? 18 A. I – I assume so. 19 Q. Do you know whether you did? 20 MR. GARCIA: Objection. 21 A. Yes. 22 Q. (BY MR. PIPER) Do you know who – who handled those? 23 handled those? 24 A. The number is automatic, the 25 (800)915-2571. 118 1 Q. Well, I'm talking about the one that's the fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts which I understood you said was the main fax number for Sea number of the credits document back to the CreditSmarts fax machine; or was it just by e-mail? 20 A. It's an e-fax. 21 A. It's an e-fax. 22 A. No. 118 120 22. Q. (And would you sometimes use faxing for that purpose? 23. Q. And did you use WestFax for those fax a would you use WestFax for those fax a would you sometimes use faxing for that purpose? 24 A. Yes. 25 Q. And did you use WestFax for those fax a would you sometimes use faxing for that purpose? 26 A. Yes. 27 28 29 20 20 20 20 20 20 21 20 20 20	12	CreditSmarts.	12	example?
A. Yes. Q. Okay. Did you ever get any requests for removal of that fax number? A. I - I assume so. Bank A. I - I assume so. C. Do you know whether you did? A. Yes. C. MR, GARCIA: Objection. A. Yes. A. The number is automatic, the said of those? A. The number is automatic, the said was the main fax number is automatic, the said was the main fax number for CreditSmarts? A. Yes. C. Okay. So, if somebody faxed a request for removal or faxed this document back to the CreditSmarts fax machine; or was it just by e-mail? A. It would be for a program guide update, and most of those are micro. C. CreditSmarts fax machine or fax number first of all, was there a fax machine; or was it just by e-mail? A. It would be for a program guide update, and most of those are micro. C. Okay. So, what would be the size of a micro fax through WestFax? A. I would be the size of a micro fax through WestFax? A. I would be the size of a micro fax through WestFax? A. I would be the size of a micro fax through WestFax? A. No. CoreditSmarts ever use WestFax for the fax? A. I would be the size of a micro fax through WestFax? A. I would be the size of a micro fax through WestFax? A. I would be the size of a micro fax through WestFax? A. I would be the size of a micro fax through WestFax? A. I would be the size of a micro fax through WestFax? A. I would be the size of a micro fax through WestFax? A. I would be the size of a micro fax through WestFax? A. WestFax Customer Agreement. A. WestFax Customer Agreement. A. WestFax Customer Agreement. A	13	Q. Okay. Is that the main fax number for	13	A. No.
16 Q. Okay. Did you ever get any requests for removal of that fax number? 17 removal of that fax number? 18 A. I – I assume so. 19 Q. Do you know whether you did? 20 MR. GARCIA: Objection. 21 A. Yes. 22 Q. (BY MR. PIPER) Do you know who – who handled those? 23 handled those? 24 A. The number is automatic, the (800)915-2571. 118 1 Q. Well, I'm talking about the one that's the fax number for CreditSmarts which I understood you sad was the main fax number for CreditSmarts which I understood you sad was the main fax number for CreditSmarts which I understood you sad was the main fax number for CreditSmarts which I understood you sad was the main fax number for CreditSmarts? 4 A. Yes. 5 Q. Okay. So, if somebody faxed a request for removal or faxed this document back to the 7 CreditSmarts fax machine; or was it just by e-mail? 9 e-mail? 10 A. It's an e-fax. 11 number from your database? 12 document back to the CreditSmarts e-fax number, what handpened? Would than call the 800 number for WestFax and enter the code. 13 Q. Okay. And is this opt-out number pretty much, to your knowledge, something that was included whenever faxes were sent through WestFax by creditSmarts? 24 A. Yes. 25 (20 And would you sometimes use faxing for that purpose? 26 A. Yes. 27 A. Yes. 28 Q. And did you use WestFax for those faxes that were just going to one or two recipients? 29 A. No. 20 And did you use WestFax for those faxes that were just going to one or two recipients? 29 A. No. 20 And did you use WestFax for those faxes that were just going to one or two recipients? 29 A. No. 20 And would be the cutoff where you would go to WestFax for the fax? 30 A. It would be the cutoff where you would go to WestFax have for the fax? 4 A. Yes. 4 A. Yes. 5 Q. Okay. Meaning what's micro? 5 Q. Okay. Meaning what's micro? 6 A. Micro would be a specific region. 7 Q. Okay. So, what would be the size of a micro fax through WestFax? 9 A. I wouldn't know. It would be reparable that would have been the office manager? 10 A. WestFax Customer Agreement.	14	CreditSmarts?	14	Q. In other words, individual communications
17 removal of that fax number? 18 A. I – I assume so. 19 Q. Do you know whether you did? 20 MR. GARCIA: Objection. 21 A. Yes. 22 Q. (BY MR. PIPER) Do you know who – who 23 handled those? 24 A. The number is automatic, the 25 (800)915-2571. 118 1 Q. Well, I'm talking about the one that's the 26 fax number for CreditSmarts which I understood you 31 said was the main fax number for CreditSmarts which I understood you 32 said was the main fax number for CreditSmarts which I understood you 33 said was the main fax number for CreditSmarts which I understood you 34 A. Yes. 55 Q. Okay, So, if somebody faxed a request for 66 removal or faxed this document back to the 17 CreditSmarts fax machine; or was it just by 18 e-mail? 19 Q. Nand would you sometimes use faxing for that purpose? 19 A. No. 118 120 120 121 120 120 121 Q. So, what would be the cutoff where you would go to WestFax for the fax? 120 A. It would be to a program guide update, and most of those are micro. 130 A. It's an e-fax. 140 A. Wes, So, what would be the sutoff where you would go to WestFax for the fax? 241 A. It would be for a program guide update, and most of those are micro. 242 A. Micro would be a specific region. 253 A. It would be a specific region. 264 A. Micro would be a specific region. 275 A. I wouldn't know. It would be the size of a micro fax through WestFax? 287 A. It wouldn't know. It would be speculation. 298 A. Yes. 299 A. It wouldn't know. It would be speculation. 290 A. Yes. 291 Chay, Because the person that handled that would have been the office manager? 292 A. Yes. 293 A. Old CreditSmarts? 294 A. WestFax Customer Agreement. 295 A. WestFax Customer Agreement. 296 A. WestFax Customer Agreement. 297 A. WestFax Customer Agreement. 298 A. It is.	15	A. Yes.	15	always went through e-mails as far as you know?
18 A. I – I assume so. 19 Q. Do you know whether you did? 20 MR. GARCIA: Objection. 21 A. Yes. 22 Q. (BY MR. PIPER) Do you know who – who handled those? 23 handled those? 24 A. The number is automatic, the 25 (800)915-2571. 26 Q. Well, I'm talking about the one that's the fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts? 4 A. Yes. 5 Q. Okay. So, if somebody faxed a request for removal or faxed this document back to the removal or faxed this document back to the all, was there a fax machine; or was it just by e-mail? 20 Q. Ckay. So, if somebody faxed this happened? Would that automatically delete the number from your database? 4 A. No. 21 that purpose? 22 A. Yes. 23 Q. And did you use WestFax for those faxes that were just going to one or two recipients? 4 A. No. 25 Q. Okay, So, what would be the cutoff where you would go to WestFax for the fax? 4 A. Yes. 5 Q. Okay. So, if somebody faxed a request for removal or faxed this document back to the creditSmarts fax machine; or was it just by e-mail? 4 A. It's an e-fax. 5 Q. Ckay. So, if somebody faxed this document back to the CreditSmarts e-fax number, what happened? Would that automatically delete the number from your database? 4 A. No. 4 No. 4 No. 5 Q. Okay. So, if somebody faxed this document back to the CreditSmarts e-fax number, what happened? Would that automatically delete the number from your database? 4 A. No. 6 No. 7 CreditSmarts ever use wester through WestFax by whenever faxes were sent through WestFax by CreditSmarts? 6 Q. Okay. And is this opt-out number pretty much, to your knowledge, something that was included whenever faxes were sent through WestFax for anything other than large fax broadcast? That is, 2 A. Yes. 2 A. Yes. 3 A. It wouldn't know. It would be speculation. 4 Q. Okay. PleER! Why don't you mark this as the next exhibit? 6 (Deposition Exhibit 20 was marked.) 7 Q. What is Exhibit 20? 8 A. I do. 9 Q. What is Exhibit 20? 9 Q. What is Exhibit 20? 9 Q. What is Exhibit 20? 9 Q. What is Exhibit 2	16	Q. Okay. Did you ever get any requests for	16	A. Contracts would come in via fax.
20. Do you know whether you did? 21. A. Yes. 22. Q. (BY MR. PIPER) Do you know who who 23. handled those? 24. A. The number is automatic, the 25. (800)915-2571. 28. A. Ves. 29. A. Yes. 20. (BW III, I'm talking about the one that's the 29. fax number for CreditSmarts which I understood you 30. said was the main fax number for CreditSmarts? 41. A. Yes. 42. A. Yes. 52. Q. Okay. So, if somebody faxed a request for 43. It's an e-fax. 44. It's an e-fax. 45. Q. Okay. So, if somebody faxed this 46. document back to the 47. CreditSmarts fax machine; or was it just by 49. e-mail? 40. It's an e-fax. 41. It's an e-fax. 41. It's an e-fax. 42. A. It's an e-fax. 43. A. It's an e-fax. 44. It's an e-fax. 45. Q. Okay. So, if somebody faxed this 46. It's an e-fax. 47. It's an e-fax. 48. It's an e-fax. 49. A. It's an e-fax. 40. Okay. So, if somebody faxed this 47. A. It's an e-fax. 48. It's an e-fax. 49. C. Okay. So, if somebody faxed this 49. E-fax. Okay. So, if somebody faxed this 40. Gument back to the CreditSmarts e-fax number, what 41. happened? Would that automatically delete the 41. number from your database? 41. A. No. The office number the office 41. In one of those and the size of a fax exhibit 20? 42. A. Yes. 43. Q. Okay. And is this opt-out number pretty 44. A. Yes. 45. Q. Okay. And is this opt-out number pretty 46. Okay. And is that your signature on the 47. and enter the code. 48. A. It's an e-fax. 49. Did CreditSmarts ever use WestFax for 49. Q. What is Exhibit 20? 40. What is Exhibit 20? 41. A. WestFax Customer Agreement. 42. A. Yes. 43. Q. Did CreditSmarts ever use WestFax for 44. A. It's an experience on the analysing other than large fax broadcast? That is, 49. A. It is.	17	removal of that fax number?	17	Q. And did you ever fax have to fax a
MR. GARCIA: Objection. A. Yes. Q. (BY MR. PIPER) Do you know who who handled those? A. The number is automatic, the (800)915-2571. 118 Q. Well, I'm talking about the one that's the fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts? A. Yes. Q. Okay. So, if somebody faxed a request for removal or faxed this document back to the CreditSmarts fax machine; or was it just by e-mail? A. It's an e-fax. A. It's would be the size of a micro fax through WestFax? A. It's would be a specific region. C. Okay. So, what would be the province in the fax? A. It would be for a program guide update, and most of those are micro. G. Okay. So, if somebody faxed a request for removal or faxed this document back to the creditSmarts fax machine; or was it just by e-mail? A. It's an e-fax. A. It wouldn't know. It would be the size of a micro fax through WestFax? A. I wouldn't know. It would be speculation. Q. Okay. Because the person that handled that would have been the office manager? A. Yes. A. Yes. A. Yes. Q. Okay. G. Oka	18	A. I I assume so.	18	contract back to a lender or an auto dealer?
A. Yes. 2. Q. (BY MR. PIPER) Do you know who who handled those? 2. A. The number is automatic, the complete is automatic, the cutoff where you would be the cutoff where you would	19	Q. Do you know whether you did?	19	A. Of course.
22 Q. (BY MR. PIPER) Do you know who who handled those? 24 A. The number is automatic, the 25 (800)915-2571. 26 The number is automatic, the 27 (800)915-2571. 28 The number for CreditSmarts which I understood you said was the main fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts? 29 A. It would be for a program guide update, and most of those are micro. 20 Cokay. So, if somebody faxed a request for removal or faxed this document back to the 21 CreditSmarts fax machine; or was it just by 22 e-mail? 23 A. It would be for a program guide update, and most of those are micro. 29 G. Okay. So, if somebody faxed a request for removal or faxed this document back to the 20 G. Okay. So, if somebody faxed this document back to the CreditSmarts fax machine; or was it just by 30 e-mail? 31 G. Cokay. So, if somebody faxed this document back to the CreditSmarts e-first of all, was there a fax machine; or was it just by 31 document back to the CreditSmarts e-fax number, what happened? Would that automatically delete the number from your database? 4 A. No. The office number the office manager would then call the 800 number for WestFax and enter the code. 4 A. No. The office number the office manager would then call the 800 number for WestFax and enter the code. 5 Q. Okay. And is this opt-out number pretty much, to your knowledge, something that was included whenever faxes were sent through WestFax by 20 Q. What is Exhibit 20? 21 A. Yes. 22 Q. Okay Conditsmarts e-fax by Exhibit 20? 22 A. Yes. 23 Q. Did CreditSmarts e-fax by Exhibit 20? 24 A. Yes. 25 A. No.	20	MR. GARCIA: Objection.	20	Q. And would you sometimes use faxing for
handled those? A. The number is automatic, the (800)915-2571. 118 120 1 Q. Well, I'm talking about the one that's the fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts? A. Yes. Q. Okay. So, if somebody faxed a request for removal or faxed this document back to the removal or faxed this document back to the call the act of all, was there a fax machine; or was it just by e-mail? A. It's an e-fax. Q. E-fax. Okay. So, if somebody faxed this document back to the CreditSmarts fax machine; or was it just by e-mail? A. It's an e-fax. A. It would be for a program guide update, and most of those are micro. Q. Okay. Meaning what's micro? A. Micro would be a specific region. Q. Okay. So, what would be the size of a micro fax through WestFax? A. I wouldn't know. It would be the size of a micro fax through WestFax? A. I wouldn't know. It would be speculation. Q. Okay. Because the person that handled that would have been the office manager? A. Yes. A. No. The office number the office manager would then call the 800 number for WestFax and enter the code. A. No. The office number the office manager would then call the 800 number for WestFax and enter the code. A. Okay. And is this opt-out number pretty much, to your knowledge, something that was included whenever faxes were sent through WestFax by CreditSmarts? A. Yes. A. WestFax Customer Agreement. A. WestFax Customer Agreement. A. WestFax Outstomer Agreement. A. Had did you use WestFax for those are micro. A. No. A. It would be the cutoff where you would go to WestFax for the fax? A. It would be the cutoff where you would be the cutoff where you would go to WestFax for the fax? A. It would have been the office manager? A. Yes. G. Okay. Because the person that handled that would have been the office manager? A. Yes. G. Okay. Because the person that handled that would have been the office manager? A. Yes. G. Okay. Beaning West's micro. G. Okay. Because the person that handled that wou	21	A. Yes.	21	that purpose?
A. The number is automatic, the (800)915-2571. 118 120 1 Q. Well, I'm talking about the one that's the fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts? A. Yes. Q. Okay. So, if somebody faxed a request for removal or faxed this document back to the cemail? A. It's an e-fax. A. No. The office number the office manager would then call the 800 number for WestFax by A. No. The office number the office manager would then call the 800 number pretty much, to your knowledge, something that was included whenever faxes were sent through WestFax for anything other than large fax broadcast? That is, D. Did CreditSmarts ever use WestFax for anything other than large fax broadcast? That is, A. No. Table WestFax for any would be the cutoff where you would go to WestFax for anything other than large fax broadcast? That is, D. So, what would be the cutoff where you would go to WestFax for anything other than large fax broadcast? A. No. D. Q. Okay. So, what would be the cutoff where you would go to WestFax for anything other than large fax broadcast? That is, D. Q. Okay. Meaning what's micro? A. It would be a specific region. Q. Okay. Meaning what's micro? A. Micro would go a specific region. Q. Okay. So, what would be the cutoff where you would go to WestFax for anything other than large fax broadcast? That is, A. No. D. A. It and would go to WestFax and be for a program guide update, and most of those are micro. Q. Okay. Meaning what's micro? A. It would be a specific region. Q. Okay. So, what would be the cutoff where you would she the cutoff where you would she that smicro? A. It would be a specific region. Q. Okay. So, what would be the cutoff where you would she that fax and most of those are micro. Q. Okay. So, what would be the cutoff wand most of the same micro. Q. Okay. So, what would have been the office micro fax through Wes	22	Q. (BY MR. PIPER) Do you know who who	22	A. Yes.
118 120 1 Q. Well, I'm talking about the one that's the fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts? A. Yes. O. Okay. So, if somebody faxed a request for removal or faxed this document back to the CreditSmarts fax machine; or was it just by e-mail? A. It's an e-fax. A. It's an e-fax. Coument back to the CreditSmarts ever use WestFax for anything other than large fax broadcast? That is, D. Okay. And is this opt-out number pretty and most of those are micro. Q. Okay. So, what would be the cutoff where you would go to WestFax for the fax? A. It would be for a program guide update, and most of those are micro. Q. Okay. Meaning what's micro? A. Micro would be a specific region. Q. Okay. So, what would be the size of a micro fax through WestFax? A. Micro would be a specific region. Q. Okay. So, what would be the cutoff where you would go to WestFax? A. It would be for a program guide update, and most of those are micro. Q. Okay. Meaning what's micro? A. Micro would be a specific region. Q. Okay. So, what would be the cutoff where you would go to WestFax for the fax? A. It would be for a program guide update, and most of those are micro. Q. Okay. Meaning what's micro? A. Micro would be a specific region. Q. Okay. So, what would be the cutoff where you would go to WestFax for the fax? A. It wouldn't know. It would be speculation. Q. Okay. So, what would be the cutoff where you would go to WestFax for the fax? A. It wouldn't know. It would be speculation. Q. Okay. So, what would be a specific region. Q. Okay. So, what would be the size of a micro fax through WestFax for the fax? A. It wouldn't know. It would be speculation. Q. Okay. Because the person that handled that would have been the office manager? A. Yes. Q. Okay. MR. PIPER: Why don't you mark this as the next exhibit? (Deposition Exhibit 20 was marked.) Q. What is Exhibit 20? A. Ido. Q. What is Exhibit 20? A. WestFax Customer Agreement. Q. And is that your signat	23	handled those?	23	Q. And did you use WestFax for those faxes
118 120 1 Q. Well, I'm talking about the one that's the fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts? 4 A. Yes. 5 Q. Okay. So, if somebody faxed a request for removal or faxed this document back to the removal or faxed this document back to the all, was there a fax machine; or was it just by e-mail? 6 A. It's an e-fax. 10 Q. E-fax. Okay. So, if somebody faxed this document back to the Production of the fax occument back to the CreditSmarts e-fax number, what happened? Would that automatically delete the number from your database? 14 A. No. The office number the office manager would then call the 800 number for WestFax and enter the code. 15 Q. Okay. And is this opt-out number pretty much, to your knowledge, something that was included whenever faxes were sent through WestFax for anything other than large fax broadcast? That is, 10 Q. So, what would be the cutoff where you would go to WestFax for anything other than large fax broadcast? That is, 1 Q. So, what would be the cutoff where you would go to WestFax for anything other than large fax broadcast? That is,	24	A. The number is automatic, the	24	that were just going to one or two recipients?
1 Q. Well, I'm talking about the one that's the 2 fax number for CreditSmarts which I understood you 3 said was the main fax number for CreditSmarts? 4 A. Yes. 5 Q. Okay. So, if somebody faxed a request for 6 removal or faxed this document back to the 7 CreditSmarts fax machine; or was it just by 8 e-mail? 9 e-mail? 10 A. It's an e-fax. 11 Q. So, what would be the cutoff where you 12 would go to WestFax for the fax? 13 A. It would be for a program guide update, 14 and most of those are micro. 15 Q. Okay. Meaning what's micro? 16 A. Micro would be a specific region. 17 Q. Okay. So, what would be for a program guide update, 18 and most of those are micro. 19 Q. Okay. Meaning what's micro? 10 A. It's an e-fax number first of 10 A. It's an e-fax. 11 Q. E-fax. Okay. So, what would be for a program guide update, 12 and most of those are micro. 13 Q. Okay. Meaning what's micro? 14 A. Micro would be a specific region. 15 A. I wouldn't know. It would be the size of a micro fax through WestFax? 16 Q. Okay. So, what would be the cutoff where you 18 would go to WestFax for 20 A. It would be for a program guide update, 18 and most of those are micro. 20 Okay. Meaning what's micro? 21 A. Micro would be a specific region. 22 A. Wes. 10 Okay. So, what would be the cutoff where you 23 A. It would be for a program guide update, 24 and most of those are micro. 24 A. NesstFax difficults and most of those are micro. 26 A. Micro would be a specific region. 27 A. I wouldn't know. It would be speculation. 28 A. I wouldn't know. It would be the cutoff where? 29 A. I wouldn't know. It would be speculation. 29 A. I wouldn't know. It would be speculation. 20 Okay. So, what would be the cutoff wand most of those are micro. 20 Okay. So, what would be the cutoff wand most of those are micro. 21 A. Yes. 22 A. Yes. 23 Q. Okay. So, if somebody faxed this 24 A. Yes. 25 Q. Okay. Because the person that handled that would have been the office manager? 26 A. Yes. 27 Q. Okay. Man is this out-out-out-out-out-out-out-out-out-out-	25	(800)915-2571.	25	A. No.
fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts? A. Yes. Q. Okay. So, if somebody faxed a request for removal or fax dumber for fax number for for for fax number for for for for for for for for for fo		118		120
fax number for CreditSmarts which I understood you said was the main fax number for CreditSmarts? A. Yes. Q. Okay. So, if somebody faxed a request for removal or fax dumber for fax number for for fax number for for fax number for for for fax number for for fax number for for fax number for for for fax number for for fax number for for fax number for for for for fax number for for for fax number for for fax number for for fax number for for fax number for for for fax number for for fax number for for for for for for for for for fo	1	Q. Well, I'm talking about the one that's the	1	Q. So, what would be the cutoff where you
3 said was the main fax number for CreditSmarts? 4 A. Yes. 5 Q. Okay. So, if somebody faxed a request for removal or faxed this document back to the CreditSmarts fax machine; or was it just by 9 e-mail? 10 A. It's an e-fax. 11 Q. Okay. So, if somebody faxed this document back to the removal or fax number first of all, was there a fax machine; or was it just by 9 e-mail? 10 A. It's an e-fax. 11 Q. Okay. So, what would be the size of a micro fax through WestFax? 12 document back to the CreditSmarts e-fax number, what happened? Would that automatically delete the number from your database? 14 No. The office number the office 15 A. No. The office number the office 16 manager would then call the 800 number for WestFax and enter the code. 17 Q. Okay. And is this opt-out number pretty 18 Q. Okay. And is this opt-out number pretty 19 much, to your knowledge, something that was included whenever faxes were sent through WestFax by 20 Q. What is Exhibit 20? 21 CreditSmarts? 22 A. Yes. 23 Q. Did CreditSmarts ever use WestFax for anything other than large fax broadcast? That is, 24 A. It is.	2	-	2	
A. Yes. Q. Okay. So, if somebody faxed a request for removal or faxed this document back to the remail? Q. CreditSmarts fax machine or fax number first of all, was there a fax machine; or was it just by e-mail? Pe-mail? A. It's an e-fax. D. CreditSmarts e-fax number in the solution of fax through WestFax? A. I wouldn't know. It would be speculation. Q. Okay. Because the person that handled that would have been the office manager? A. Yes. A. Yes. Q. Okay. MR. PIPER: Why don't you mark this as the next exhibit? In the solution of the series in the solution of the size of a micro fax through WestFax? A. Yes. Q. Okay. Because the person that handled that would have been the office manager? A. Yes. Q. Okay. MR. PIPER: Why don't you mark this as the next exhibit? (Deposition Exhibit 20 was marked.) Q. (BY MR. PIPER) Do you recognize Exhibit 20? A. I do. Q. What is Exhibit 20? A. I do. Q. What is Exhibit 20? A. I do. Q. What is Exhibit 20? A. WestFax Customer Agreement. Q. And is that your signature on the agreement? A. It is.	3	said was the main fax number for CreditSmarts?	3	_
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9 e-mail? A. It's an e-fax. 10 Q. Okay. Because the person that handled 11 Q. E-fax. Okay. So, if somebody faxed this 12 document back to the CreditSmarts e-fax number, what 13 happened? Would that automatically delete the 14 number from your database? 15 A. No. The office number the office 16 manager would then call the 800 number for WestFax 17 and enter the code. 18 Q. Okay. And is this opt-out number pretty 19 much, to your knowledge, something that was included 20 whenever faxes were sent through WestFax by 21 CreditSmarts? 22 A. Yes. 23 Q. Did CreditSmarts ever use WestFax for 24 anything other than large fax broadcast? That is, 20 Okay. Because the person that handled 11 that would have been the office manager? 12 A. I wouldn't know. It would be speculation. 10 Q. Okay. Because the person that handled that would have been the office manager? 11 A. Yes. 12 A. I wouldn't know. It would be speculation. 12 Q. Okay. Because the person that handled that would have been the office manager? 12 A. I wouldn't know. It would be speculation. 13 Q. Okay. Because the person that handled that would have been the office manager? 14 A. Yes. 15 A. Yes. 16 Q. Okay. 17 MR. PIPER: Why don't you mark this as the next exhibit? 18 (Deposition Exhibit 20 was marked.) 19 Q. (BY MR. PIPER) Do you recognize 18 Exhibit 20? 20 Q. What is Exhibit 20? 21 A. WestFax Customer Agreement. 22 A. Yes. 23 Q. And is that your signature on the agreement? 24 A. It is.	7	CreditSmarts fax machine or fax number first of	7	Q. Okay. So, what would be the size of a
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11 Q. E-fax. Okay. So, if somebody faxed this 12 document back to the CreditSmarts e-fax number, what 13 happened? Would that automatically delete the 14 number from your database? 15 A. No. The office number the office 16 manager would then call the 800 number for WestFax 17 and enter the code. 18 Q. Okay. And is this opt-out number pretty 19 much, to your knowledge, something that was included 20 whenever faxes were sent through WestFax by 21 CreditSmarts? 22 A. Yes. 23 Q. Did CreditSmarts ever use WestFax for 24 anything other than large fax broadcast? That is, 21 that would have been the office manager? A. Yes. 12 A. Yes. 13 Q. Okay. A. Yes. 14 MR. PIPER: Why don't you mark this as the next exhibit? (Deposition Exhibit 20 was marked.) Q. (BY MR. PIPER) Do you recognize Exhibit 20? A. I do. Q. What is Exhibit 20? A. WestFax Customer Agreement. Q. And is that your signature on the agreement? A. It is.	9	e-mail?	9	A. I wouldn't know. It would be speculation.
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happened? Would that automatically delete the number from your database? A. No. The office number the office manager would then call the 800 number for WestFax and enter the code. Q. Okay. The office number pretty and enter the code. Q. Okay. And is this opt-out number pretty much, to your knowledge, something that was included whenever faxes were sent through WestFax by CreditSmarts? A. Yes. Q. Okay. A. Yes. Q. Okay. MR. PIPER: Why don't you mark this as the next exhibit? (Deposition Exhibit 20 was marked.) Q. (BY MR. PIPER) Do you recognize Exhibit 20? A. I do. Q. What is Exhibit 20? A. WestFax Customer Agreement. Q. And is that your signature on the agreement? A. It is.	11	Q. E-fax. Okay. So, if somebody faxed this	11	that would have been the office manager?
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24 anything other than large fax broadcast? That is, 24 A. It is.				
2, 3, 4, 4, 4, 4, 5, 4, 4, 4, 4, 4, 4, 4, 4, 4, 4, 4, 4, 4,	23			<u> </u>
25 Q. Is this the only agreement to your	0.4			/\ It 10
į l		, -		

	121		123
1 knowledge that W	/estFax and CreditSmarts have had?	1	Q. And is that still the current business
2 A. To my kno		2	address of CreditSmarts?
•	ver send a fax through WestFax	3	A. Physical address. No mail.
4 personally?		4	Q. And what is the space that you have at
5 A. I don't reca	all.	5	5029 Lamart? Has that changed during the time?
6 Q. Okay. Do	you recall ever uploading an	6	A. No.
	cel spreadsheet with fax numbers so	7	Q. So, what is the space that you've had at
8 that WestFax cou	·	8	5029 Lamart?
9 A. I don't reca	all.	9	A. Suite E as in Edward.
10 Q. Okay. Ha	ve you ever watched somebody else	10	Q. But, I mean, what physically does that
11 do that at CreditS	marts?	11	space consist of? What does Suite E consist of?
12 A. Yes.		12	Like how many square feet is Suite E?
13 Q. Okay. Wh	no did you watch do that?	13	A. 1,000 square feet.
14 A. My brothe	r.	14	Q. And how many offices are in there?
15 Q. Okay. Wa	as he sort of showing you here's	15	A. Three.
16 how easy it is to s	send these out, or what was the	16	Q. Three offices. And how many what's the
17 circumstances?		17	maximum number of computers you've had working at
18 A. Exactly.		18	the 5029 Lamart address?
19 Q. Like look v	what I can do to send these out	19	A. Eight, nine.
20 to our customers?	?	20	Q. Eight to nine. Okay.
21 A. Yes.		21	Where was did Alex Gomez ever work
22 Q. Okay. Let	s step back and talk a bit	22	in your home?
23 about the chronol	ogy of CreditSmarts.	23	A. No.
24 When d	d you first set up business?	24	Q. Did he have the same desk location
25 A. June or	January of 2005.	25	throughout the time he was working at CreditSmarts?
	122		124
1 Q. Okay. Ar	d at what point did you actually	1	A. No.
1	point in June January, 2005 where	2	Q. Okay. Where was his desk located in
3 did CreditSmarts	do business?	3	December, 2012?
4 A. Out of my	home.	4	A. In a private office.
5 Q. And what	was your home address at that	5	Q. Was he the only one that used that office?
6 time?		6	A. Yes.
7 A. 19247 Hit	ching Post Place, Riverside	7	Q. And how many computers did he have for his
8 California.		8	office?
9 Q. Which is t	he same address you live at now;	9	A. One.
10 is that correct?		10	Q. Okay. Do you know where that computer is
11 A. Correct.		11	now?
12 Q. And how	many people were working with you	12	A. In June of 2012? I don't know which
13 in your home who	en CreditSmarts got started?	13	computer it would be.
14 A. Two.		14	Q. Well, I'm talking about in December, 2012
15 Q. You and y		15	the computer that was in Alex Gomez' office, do you
1	d Eric Lindquist, developer	16	know if that's still the same computer he had when
17 contract develope		17	he left the company last fall?
1	d at what point did you move some	18	A. I assume so.
	ations of CreditSmarts to a	19	Q. Do you know what happened to that computer
20 location other tha	•	20	once he left the company?
21 A. June of 20		21	A. I have a computer of his on my desk. It's
	the address that you had some	22	unusable.
· ·	side your home in June, 2005?	23	Q. Why is it unusable?
	art Drive, Suite E as in Edward,	24 25	A. It won't boot.
25 Riverside, Califor	111a 32001.	25	Q. Is that something that he did to sabotage

I	125		127
1	the computer to your belief?	1	Q. Okay. Do you access them through Internet
2	A. No. I believe he was complaining of hard	2	or through how do you deal with them?
3	drive failure for months previous.	3	A. Pardon me?
4	Q. Okay. Okay. I appreciate your testimony	4	Q. How do you deal with them? Do you deal
5	about that, and I'm going to ask that that computer	5	with them online, or do you deal with them by mail?
6	not be destroyed in the event that it may have	6	A. On their Web site.
7	discoverable information on it.	7	Q. So, other than the stored drive with the
8	And to your knowledge, Mr. Ryan, does	8	Data Depot solicitation information, do you have any
9	it still have the same failed hard drive in the	9	other shared or common drives for a number of people
10	computer?	10	at CreditSmarts to use?
11	A. To my knowledge.	11	A. Yes.
12	Q. In other words, you haven't said, This is	12	Q. Okay. What other shared drives do you
13	a screwed up hard drive. Let's get rid of it?	13	have?
14	You've kept it in the computer?	14	A. Zoho.com. It's not a shared drive.
15	A. To my knowledge.	15	Q. So, you have some cloud services
16	 Q. Did you have a practice at CreditSmarts in 	16	essentially for would Zoho.com be a cloud
17	December, 2012 about well, first of all, did you	17	service?
18	have a computer network for the people in the office	18	A. It's a CRM.
19	at CreditSmarts? Were the people on a network of	19	Q. What does CRM mean?
20	some sort so that there were shared drives that	20	A. Customer Relational Management tool.
21	everybody could save information to?	21	Q. And is that a database that you maintain
22	A. No.	22	for CreditSmarts, but you use an Internet company to
23	Q. So, if there was a file for example, if	23	maintain that information for you on their servers;
24	Alex Gomez wanted to download or upload a file from	24	is that correct?
25	his computer, there was no shared drive that	25	A. Correct.
	126		128
1	everybody at the office would have access to?	1	Q. And is that where you keep your customer
2	A. There was a storage drive.	2	database?
3	Q. Okay.	3	A. No.
4	 But they don't have access to it. 	4	Q. Where do you keep your customer database
5	Q. Who has access to the storage drive?	5	of existing customers?
6	 A. It's strictly used for a database. 	6	A. On servers.
7	Q. Okay. Is that the customer database that	7	Q. And are those servers accessible through
8	contains the names of the dealers and so forth?	8	some sort of network to employees throughout
	A. No.	9	CreditSmarts?
9		10	
10	Q. Is it a database that reflects the		A. No.
10 11	applications of loans and that sort of thing?	11	Q. Who has access to that server?
10 11 12	applications of loans and that sort of thing? A. No.	12	Q. Who has access to that server?A. Those servers are accessible through the
10 11 12 13	applications of loans and that sort of thing?A. No.Q. So, what's the database that's on the	12 13	Q. Who has access to that server? A. Those servers are accessible through the data center that they're hosted.
10 11 12 13 14	applications of loans and that sort of thing? A. No. Q. So, what's the database that's on the stored drive?	12 13 14	Q. Who has access to that server? A. Those servers are accessible through the data center that they're hosted. Q. What is the data center that they're
10 11 12 13 14 15	applications of loans and that sort of thing?A. No.Q. So, what's the database that's on the stored drive?A. That is a solicitation database.	12 13 14 15	Q. Who has access to that server?A. Those servers are accessible through the data center that they're hosted.Q. What is the data center that they're hosted?
10 11 12 13 14 15	applications of loans and that sort of thing? A. No. Q. So, what's the database that's on the stored drive? A. That is a solicitation database. Q. What do you mean by "a solicitation	12 13 14 15 16	 Q. Who has access to that server? A. Those servers are accessible through the data center that they're hosted. Q. What is the data center that they're hosted? A. Codero.
10 11 12 13 14 15 16	applications of loans and that sort of thing? A. No. Q. So, what's the database that's on the stored drive? A. That is a solicitation database. Q. What do you mean by "a solicitation database"?	12 13 14 15 16 17	 Q. Who has access to that server? A. Those servers are accessible through the data center that they're hosted. Q. What is the data center that they're hosted? A. Codero. Q. How do you spell that?
10 11 12 13 14 15 16 17	applications of loans and that sort of thing? A. No. Q. So, what's the database that's on the stored drive? A. That is a solicitation database. Q. What do you mean by "a solicitation database"? A. Telemarketing.	12 13 14 15 16 17 18	 Q. Who has access to that server? A. Those servers are accessible through the data center that they're hosted. Q. What is the data center that they're hosted? A. Codero. Q. How do you spell that? A. C-o-d-e-r-o.
10 11 12 13 14 15 16 17 18	applications of loans and that sort of thing? A. No. Q. So, what's the database that's on the stored drive? A. That is a solicitation database. Q. What do you mean by "a solicitation database"? A. Telemarketing. Q. And where did you get the information to	12 13 14 15 16 17 18 19	 Q. Who has access to that server? A. Those servers are accessible through the data center that they're hosted. Q. What is the data center that they're hosted? A. Codero. Q. How do you spell that? A. C-o-d-e-r-o. Q. Okay. So, that's is that another
10 11 12 13 14 15 16 17 18 19 20	applications of loans and that sort of thing? A. No. Q. So, what's the database that's on the stored drive? A. That is a solicitation database. Q. What do you mean by "a solicitation database"? A. Telemarketing. Q. And where did you get the information to use to create the telemarketing database?	12 13 14 15 16 17 18	 Q. Who has access to that server? A. Those servers are accessible through the data center that they're hosted. Q. What is the data center that they're hosted? A. Codero. Q. How do you spell that? A. C-o-d-e-r-o. Q. Okay. So, that's is that another off another online storage service that
10 11 12 13 14 15 16 17 18	applications of loans and that sort of thing? A. No. Q. So, what's the database that's on the stored drive? A. That is a solicitation database. Q. What do you mean by "a solicitation database"? A. Telemarketing. Q. And where did you get the information to use to create the telemarketing database? A. Data Depot.	12 13 14 15 16 17 18 19 20	 Q. Who has access to that server? A. Those servers are accessible through the data center that they're hosted. Q. What is the data center that they're hosted? A. Codero. Q. How do you spell that? A. C-o-d-e-r-o. Q. Okay. So, that's is that another off another online storage service that A. It's a data center. It's a call location
10 11 12 13 14 15 16 17 18 19 20 21	applications of loans and that sort of thing? A. No. Q. So, what's the database that's on the stored drive? A. That is a solicitation database. Q. What do you mean by "a solicitation database"? A. Telemarketing. Q. And where did you get the information to use to create the telemarketing database? A. Data Depot. Q. So, that's is that a vendor that	12 13 14 15 16 17 18 19 20 21	 Q. Who has access to that server? A. Those servers are accessible through the data center that they're hosted. Q. What is the data center that they're hosted? A. Codero. Q. How do you spell that? A. C-o-d-e-r-o. Q. Okay. So, that's is that another off another online storage service that A. It's a data center. It's a call location data center, a lockdown facility.
10 11 12 13 14 15 16 17 18 19 20 21	applications of loans and that sort of thing? A. No. Q. So, what's the database that's on the stored drive? A. That is a solicitation database. Q. What do you mean by "a solicitation database"? A. Telemarketing. Q. And where did you get the information to use to create the telemarketing database? A. Data Depot.	12 13 14 15 16 17 18 19 20 21 22	 Q. Who has access to that server? A. Those servers are accessible through the data center that they're hosted. Q. What is the data center that they're hosted? A. Codero. Q. How do you spell that? A. C-o-d-e-r-o. Q. Okay. So, that's is that another off another online storage service that A. It's a data center. It's a call location
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	129		131
1 A. Correct.		1	A. He could have saved it anywhere. He would
 Q. And which emplo 	yees of CreditSmarts and	2	have been fired.
3 I don't need names. I just	st need to know like who	3	Q. Why?
4 who on the CreditSmarts	s staff would have access to	4	A. It's sensitive information.
5 the database through Co	odero?	5	Q. Okay. So, once that was uploaded to
6 A. No one.		6	WestFax first of all, did he have to create a
7 Q. Okay. Well, for e	example, if you want to	7	file to upload it to WestFax?
8 send a fax to fax number	rs, would those fax numbers	8	A. Yes.
9 that would be coming fro	m your database of existing	9	Q. And where was he supposed to save that
10 customers, would those	fax numbers get access	10	file between when he accessed Codero and when he
11 through the database at	Codero?	11	uploaded it to WestFax?
12 A. No.		12	A. A temporary directory, I would assume.
13 Q. Where would tho	se fax numbers get accessed	13	Q. Would that have been on his computer?
14 from?		14	A. Yes.
15 A. Through CreditSr	marts.com which is hosted	15	Q. And then he was to delete that afterwards?
16 at Codero.		16	A. Correct.
17 Q. Okay. So, the co	mmon computer platform	17	Q. Okay.
18 that your employees can	work through to access	18	A. To clarify, no office desk in our office
19 shared information would	d be the CreditSmarts.com	19	had in CreditSmarts' office has drawers.
20 interface which they can	access with employee	20	Q. Physical drawers?
21 passwords or things like	that; is that correct?	21	A. Physical drawers.
22 A. Correct.		22	Q. In other words, your entire business is
23 Q. And then through	that they can reach out	23	paperless essentially?
24 to the Codero servers that	at are at a lockdown	24	A. Correct.
25 facility somewhere else?		25	MR. PIPER: Can we mark that as the next
	130		132
1 1 1	100		
1 A. Correct.		1	exhibit?
2 Q. Do you know wh		2	(Deposition Exhibit 21 was marked.)
A. Arizona and Chi	•	3	Q. (BY MR. PIPER) Do you recognize
•	of those Internet-based	4	Exhibit 21?
ŭ '	p provide any kind of storage	5	A. Yes.
, ,	lownload specific files to	6	Q. What is Exhibit 21?
·	anted to save an image	7	A. A document that I saw with respect to the
8 A. No.		8	other TCPA lawsuit you filed.
9 Q or a fax?		9	Q. Okay. So, was the first time you saw this
	mez, for example, had	10	document when the other TCPA lawsuit was filed?
	of Exhibit 1 when he sent the	11	A. Correct.
	al place in the business of	12	Q. Do you typically receive the faxes that
	have saved that been his	13	are sent out by CreditSmarts when they're sent?
14 personal computer		14	A. No.
15 A. Correct.		15	Q. Okay. So, if I pulled out some other
Q in his office?		16	program updates that had been faxed by CreditSmarts
17 The computer	'in his office?	17	that have not been subjects of lawsuits, it's likely
		18	you would not have seen some of them before?
18 A. Correct.			A. It's likely.
19 Q. And would that a	also be true if he had	19	•
19 Q. And would that a 20 wanted to save the data	abase file that contained the	20	Q. Okay. Did you make an investigation when
Q. And would that a wanted to save the data fax numbers to which the	abase file that contained the ne fax was being sent?	20 21	Q. Okay. Did you make an investigation when you found out you were being sued about this fax to
Q. And would that a wanted to save the data fax numbers to which the A. He would have the same and the same a	abase file that contained the	20 21 22	Q. Okay. Did you make an investigation when you found out you were being sued about this fax to determine the circumstances in which it was faxed by
Q. And would that a wanted to save the data fax numbers to which the A. He would have the had done that.	abase file that contained the ne fax was being sent? been released immediately if	20 21 22 23	Q. Okay. Did you make an investigation when you found out you were being sued about this fax to determine the circumstances in which it was faxed by CreditSmarts?
Q. And would that a wanted to save the data fax numbers to which the A. He would have the had done that.	abase file that contained the ne fax was being sent? been released immediately if there any place that he	20 21 22	Q. Okay. Did you make an investigation when you found out you were being sued about this fax to determine the circumstances in which it was faxed by

	133		135
1	City Select that related to this fax; is that	1	Q. Did you give him any instructions about
2	correct?	2	what he should do in the future with regard to fax
3	A. Correct.	3	advertising? Well, I'm sorry.
4	Q. But I'm asking you about it not because	4	A. Yes.
5	that dispute is still active but just as it pertains	5	Q. By the time you saw this, you had already
6	to some of your generalizations about the way you	6	been sued?
7	sent faxes.	7	A. (Nods head.)
8	So, what is the purpose of this fax	8	Q. Right. Okay. Well, given both that
9	that was sent by CreditSmarts?	9	Exhibit 1 and Exhibit 21 are unusual faxes for
10	MR. GARCIA: Objection.	10	CreditSmarts, do you know how many other unusual
11	A. I wouldn't know.	11	faxes were sent that did not fit the norm of
12	Q. (BY MR. PIPER) Is it obvious to you why	12	A. I do not.
13	this was sent by CreditSmarts?	13	Q program guideline updates?
14	A. I wouldn't know.	14	MR. GARCIA: Objection.
15	Q. Does this do you know what this number	15	A. I do not.
16	is (888)345-0918?	16	Q. (BY MR. PIPER) And you don't know that
17	A. Yes.	17	these are the only two that were sent?
18	Q. What number is that?	18	A. I do not.
19	A. It's CreditSmarts' general phone number.	19	Q. Did you ever talk to Alex about that?
20	Q. Okay. Do you know who sent this fax?	20	A. No.
21	A. Alex.	21	Q. Do you have reason to think there are
22	Q. Okay. And did you ask him why he sent it?	22	other faxes that are outside the norms of the
23	A. No.	23	program guideline updates?
24	Q. Okay. Did you talk to him about in	24	A. No. That would be speculation.
25	your view, does this fax once you saw this fax,	25	Q. Okay. The communication you had with Alex
	134		400
	104		136
1		1	
1 2	did you talk to Alex about whether you thought this	1 2	Gomez in June, 2012 about communications with
			Gomez in June, 2012 about communications with Up2Drive or marketing for Up2Drive, did you ever put
2	did you talk to Alex about whether you thought this fax was an effective promotion for CreditSmarts'	2	Gomez in June, 2012 about communications with
2	did you talk to Alex about whether you thought this fax was an effective promotion for CreditSmarts' business?	2 3	Gomez in June, 2012 about communications with Up2Drive or marketing for Up2Drive, did you ever put that in writing for him?
2 3 4	did you talk to Alex about whether you thought this fax was an effective promotion for CreditSmarts' business? A. No.	2 3 4	Gomez in June, 2012 about communications with Up2Drive or marketing for Up2Drive, did you ever put that in writing for him? A. No.
2 3 4 5	did you talk to Alex about whether you thought this fax was an effective promotion for CreditSmarts' business? A. No. Q. You didn't tell him, This isn't going to	2 3 4 5	Gomez in June, 2012 about communications with Up2Drive or marketing for Up2Drive, did you ever put that in writing for him? A. No. Q. The database of customer information that
2 3 4 5 6	did you talk to Alex about whether you thought this fax was an effective promotion for CreditSmarts' business? A. No. Q. You didn't tell him, This isn't going to help us grow our business?	2 3 4 5 6	Gomez in June, 2012 about communications with Up2Drive or marketing for Up2Drive, did you ever put that in writing for him? A. No. Q. The database of customer information that is accessible to CreditSmarts' employees through
2 3 4 5 6 7	did you talk to Alex about whether you thought this fax was an effective promotion for CreditSmarts' business? A. No. Q. You didn't tell him, This isn't going to help us grow our business? A. No.	2 3 4 5 6 7	Gomez in June, 2012 about communications with Up2Drive or marketing for Up2Drive, did you ever put that in writing for him? A. No. Q. The database of customer information that is accessible to CreditSmarts' employees through CreditSmarts.com, is that accessible to anyone
2 3 4 5 6 7 8	did you talk to Alex about whether you thought this fax was an effective promotion for CreditSmarts' business? A. No. Q. You didn't tell him, This isn't going to help us grow our business? A. No. Q. Okay. Does this fax contain rates and	2 3 4 5 6 7 8	Gomez in June, 2012 about communications with Up2Drive or marketing for Up2Drive, did you ever put that in writing for him? A. No. Q. The database of customer information that is accessible to CreditSmarts' employees through CreditSmarts.com, is that accessible to anyone outside of CreditSmarts?
2 3 4 5 6 7 8	did you talk to Alex about whether you thought this fax was an effective promotion for CreditSmarts' business? A. No. Q. You didn't tell him, This isn't going to help us grow our business? A. No. Q. Okay. Does this fax contain rates and guidelines of CreditSmarts?	2 3 4 5 6 7 8	Gomez in June, 2012 about communications with Up2Drive or marketing for Up2Drive, did you ever put that in writing for him? A. No. Q. The database of customer information that is accessible to CreditSmarts' employees through CreditSmarts.com, is that accessible to anyone outside of CreditSmarts? A. No.
2 3 4 5 6 7 8 9	did you talk to Alex about whether you thought this fax was an effective promotion for CreditSmarts' business? A. No. Q. You didn't tell him, This isn't going to help us grow our business? A. No. Q. Okay. Does this fax contain rates and guidelines of CreditSmarts? A. No.	2 3 4 5 6 7 8 9	Gomez in June, 2012 about communications with Up2Drive or marketing for Up2Drive, did you ever put that in writing for him? A. No. Q. The database of customer information that is accessible to CreditSmarts' employees through CreditSmarts.com, is that accessible to anyone outside of CreditSmarts? A. No. Q. And that, just to make sure I understood
2 3 4 5 6 7 8 9 10	did you talk to Alex about whether you thought this fax was an effective promotion for CreditSmarts' business? A. No. Q. You didn't tell him, This isn't going to help us grow our business? A. No. Q. Okay. Does this fax contain rates and guidelines of CreditSmarts? A. No. Q. Does this fax mention any other companies?	2 3 4 5 6 7 8 9 10	Gomez in June, 2012 about communications with Up2Drive or marketing for Up2Drive, did you ever put that in writing for him? A. No. Q. The database of customer information that is accessible to CreditSmarts' employees through CreditSmarts.com, is that accessible to anyone outside of CreditSmarts? A. No. Q. And that, just to make sure I understood your testimony, is maintained on the servers at
2 3 4 5 6 7 8 9 10 11	did you talk to Alex about whether you thought this fax was an effective promotion for CreditSmarts' business? A. No. Q. You didn't tell him, This isn't going to help us grow our business? A. No. Q. Okay. Does this fax contain rates and guidelines of CreditSmarts? A. No. Q. Does this fax mention any other companies? A. No.	2 3 4 5 6 7 8 9 10 11	Gomez in June, 2012 about communications with Up2Drive or marketing for Up2Drive, did you ever put that in writing for him? A. No. Q. The database of customer information that is accessible to CreditSmarts' employees through CreditSmarts.com, is that accessible to anyone outside of CreditSmarts? A. No. Q. And that, just to make sure I understood your testimony, is maintained on the servers at Codero?
2 3 4 5 6 7 8 9 10 11 12 13	did you talk to Alex about whether you thought this fax was an effective promotion for CreditSmarts' business? A. No. Q. You didn't tell him, This isn't going to help us grow our business? A. No. Q. Okay. Does this fax contain rates and guidelines of CreditSmarts? A. No. Q. Does this fax mention any other companies? A. No. Q. So, to your knowledge, this fax is not	2 3 4 5 6 7 8 9 10 11 12 13	Gomez in June, 2012 about communications with Up2Drive or marketing for Up2Drive, did you ever put that in writing for him? A. No. Q. The database of customer information that is accessible to CreditSmarts' employees through CreditSmarts.com, is that accessible to anyone outside of CreditSmarts? A. No. Q. And that, just to make sure I understood your testimony, is maintained on the servers at Codero? A. Correct.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	did you talk to Alex about whether you thought this fax was an effective promotion for CreditSmarts' business? A. No. Q. You didn't tell him, This isn't going to help us grow our business? A. No. Q. Okay. Does this fax contain rates and guidelines of CreditSmarts? A. No. Q. Does this fax mention any other companies? A. No. Q. So, to your knowledge, this fax is not typical of the program updates? A. No. It should have CreditSmarts on it. "New and Improved" is accurate. We did CreditSmarts did a major upgrade in 2012 to the compliance package.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Gomez in June, 2012 about communications with Up2Drive or marketing for Up2Drive, did you ever put that in writing for him? A. No. Q. The database of customer information that is accessible to CreditSmarts' employees through CreditSmarts.com, is that accessible to anyone outside of CreditSmarts? A. No. Q. And that, just to make sure I understood your testimony, is maintained on the servers at Codero? A. Correct. Q. And what is the current size of that database? A. There are 31,000 registered auto dealerships with 18,000-plus remaining. Q. What do you mean by "18,000-plus
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	did you talk to Alex about whether you thought this fax was an effective promotion for CreditSmarts' business? A. No. Q. You didn't tell him, This isn't going to help us grow our business? A. No. Q. Okay. Does this fax contain rates and guidelines of CreditSmarts? A. No. Q. Does this fax mention any other companies? A. No. Q. So, to your knowledge, this fax is not typical of the program updates? A. No. It should have CreditSmarts on it. "New and Improved" is accurate. We did CreditSmarts did a major upgrade in 2012 to the compliance package. Q. Okay. Did did you tell Alex that it was a problem that the CreditSmarts' name wasn't on the fax?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Gomez in June, 2012 about communications with Up2Drive or marketing for Up2Drive, did you ever put that in writing for him? A. No. Q. The database of customer information that is accessible to CreditSmarts' employees through CreditSmarts.com, is that accessible to anyone outside of CreditSmarts? A. No. Q. And that, just to make sure I understood your testimony, is maintained on the servers at Codero? A. Correct. Q. And what is the current size of that database? A. There are 31,000 registered auto dealerships with 18,000-plus remaining. Q. What do you mean by "18,000-plus remaining"? A. Roughly 12- to 13,000 have gone out of business and have been removed.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	did you talk to Alex about whether you thought this fax was an effective promotion for CreditSmarts' business? A. No. Q. You didn't tell him, This isn't going to help us grow our business? A. No. Q. Okay. Does this fax contain rates and guidelines of CreditSmarts? A. No. Q. Does this fax mention any other companies? A. No. Q. So, to your knowledge, this fax is not typical of the program updates? A. No. It should have CreditSmarts on it. "New and Improved" is accurate. We did CreditSmarts did a major upgrade in 2012 to the compliance package. Q. Okay. Did did you tell Alex that it was a problem that the CreditSmarts' name wasn't on the fax? A. Yes. Q. Other than that, did you tell him any	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Gomez in June, 2012 about communications with Up2Drive or marketing for Up2Drive, did you ever put that in writing for him? A. No. Q. The database of customer information that is accessible to CreditSmarts' employees through CreditSmarts.com, is that accessible to anyone outside of CreditSmarts? A. No. Q. And that, just to make sure I understood your testimony, is maintained on the servers at Codero? A. Correct. Q. And what is the current size of that database? A. There are 31,000 registered auto dealerships with 18,000-plus remaining. Q. What do you mean by "18,000-plus remaining"? A. Roughly 12- to 13,000 have gone out of business and have been removed. Q. Okay. So, are they in the database? A. No.

	137		139
1		,	
1	inactive; or do you mean that the information was	1	A. Yes. Q. Did he know that CreditSmarts was sued
2	erased from the database file?	2 3	because of the ad?
3	A. Deleted.		
4	Q. And do you know do you specifically	4	A. Yes.
5	know how Codero deals with those deletions?	5	MR. GARCIA: Objection.
6	A. Codero doesn't. The CreditSmarts.com Web	6	Q. (BY MR. PIPER) Was that a did you have
7	site has a delete option.	7	a conversation with him about that?
8	Q. But the physical electronic data that	8	A. Yes.
9	maintains the database, do you know how that data is	9	Q. When was that conversation?
10	altered when	10	A. In August of 2012.
11	A. Yes. It's altered realtime.	11	Q. Was that the same conversation where
12	Q. And how is it altered, though? That's	1.2	you did you just have one conversation with him
13	what I'm in other words, deleting a file	13	about all that, or did you have a series of
14	A. The database is organic. If the file is	14	conversations?
15	deleted, it's deleted. If a new file is added, it's	15	A. I don't recall.
16	added.	16	Q. Okay. Are you aware of any internal
17	Q. Are you familiar, for example, that when	17	policy that BMW maintained about electronic
18	you delete a Microsoft Word document on your	18	communications and phone usage?
19	computer all it deletes is a code or two	19	A. I am not.
20	A. Correct.	20	Q. Did they ever give you a copy of a policy
21	Q and the data could remain there?	21	concerning electronic communication and phone usage?
22	Do you know if there's anything done	22	A. I don't recall.
23	to wipe the data at Codero when you delete a file,	23	Q. Why don't we I only have one copy; but
24	or is it possible that they just delete a few codes	24	just since you said you don't recall, let's mark it.
25	that would make the information no longer	25	MR. PIPER: It's, for the record, BMW
	138		140
1	accessible?	1	WFS BMWFS 107 through 110 if you guys want to
2	A. I don't know how their data center works.	2	look at it.
3	Q. And, to your knowledge, is there a backup	3	MR. HAYES: What is this, Jon?
4	of that database anywhere other than at Codero?	4	MR. PIPER: It's what it appears to be, I
5	A. No.	5	guess. It was produced Friday by BMW.
6	Q. Do you know if they maintain a backup of	6	MR. HAYES: Okay.
7	it?	7	MR. PIPER: If you could just mark that.
8	A. No.	8	(Deposition Exhibit 22 was marked.)
9	Q. Okay. Did you talk to Alex Gomez	9	Q. (BY MR. PIPER) Do you know if you've ever
10	specifically about whether he got the Up2Drive logo	10	seen Exhibit 22 before?
11	for Exhibit 1 off the Internet or off of	11	A. I don't recall.
12	CreditSmarts' internal files?	12	Q. Okay. Meaning that you may have seen it
13	A. I did not.	13	or you may not? It just doesn't
14	Q. Okay. In one of your interrogatory	14	A. I wouldn't think so, no.
15	responses you say a former employee cut and pasted	15	Q. To the best of your recollection
16	the BMW name, picture, and logos on Exhibit A from	16	A. No.
17	the Internet. It's possible that he cut and pasted	17	Q you did not receive it?
18	some of that from CreditSmarts' files?	18	Okay. And you didn't receive any
19	A. It's possible.	19	earlier or later version of that policy?
20	MR. GARCIA: Objection.	20	A. No.
21	Q. (BY MR. PIPER) And, again, you're	21	Q. Okay.
22	referring as a former employee to Alex Gomez?	22	MR. PIPER: How about this would be a
23	A. Correct.	23	good time to take another five minutes if that's
24	Q. And he was a current employee at the time	24	good for you?
25	that he created the ad?	25	MR. HAYES: Okay.
1	• •	25	-

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	141		143
1	(Recess taken from 1:08 p.m. to 1:12 p.m.)	1	Q. Real estate appraiser. And what kind of
2	Q. (BY MR. PIPER) Mr. Ryan, I think I may	2	consulting were you doing?
3	have left a loose end. Earlier I asked you back in	3	A. Automation, risk-based pricing.
4	August of 2013 when you talked to Mr. Gomez if you	4	Q. Did you say risk based?
5	asked him if he had discussed sending the fax with	5	A. Pricing.
6	CreditSmarts and you told me that you had instructed	6	Q. Pricing. Okay. What is risk-based
7	him back in 2012 not to talk to Up2Drive?	7	pricing?
8	A. Yes.	8	A. Underwriting rules.
9	MR. HAYES: You meant Up2Drive?	9	Q. And what were you doing before you became
10	MR. PIPER: Yeah.	10	a consultant?
11	Q. (BY MR. PIPER) Back in August, 2013 when	11	A. I worked for Washington Mutual.
12	you talked to Mr. Gomez, did you ask him if he had	12	Q. And how long did you work at Washington
13	talked to anybody at Up2Drive before sending the	13	Mutual?
14	fax?	14	A. Just under 10 years.
15	A. No.	15	Q. So, would your Washington Mutual job go
16	Q. Did you talk to him about did he talk	16	back to before you got your degree?
17	to you about whether he had talked to anybody at	17	A. Yes.
18	Up2Drive?	18	Q. Okay. What were you doing before
19	A. No.	19	Washington Mutual?
20	Q. Okay. Did you mention to him in that	20	A. I worked for what became a subsidiary of
21	conversation that he wasn't supposed to talk to	21	Washington Mutual which was Long Beach Bank, Long
22	Up2Drive in August, 2013?	22	Beach Mortgage.
23	A. No.	23	Q. And when did you start in the financial
24	Q. Okay. I'm going to go through your	24	services industry?
25	background and, first of all, I hope you don't feel	25	A. I was 18 years old.
	142		144
1	it invasive but how old are you?	1	Q. And what where did you start then?
2	A. 45 years old.	2	A. I started real estate appraising when I
3	MR. HAYES: Going on 50.	3	was 18.
4	Q. (BY MR. PIPER) When what was the	4	Q. And is it fair to say that you your job
5	highest educational degree you reached?	5	fell victim to the mortgage crisis
6	A. I have a four-year degree.	6	A. No.
7	Q. And where did you get that?	7	Q in 2000?
8	A. A bachelor's of science from University of	8	Okay. Why did you leave Washington
9	Redlands.	9	Mutual then?
10	Q. When did you get that?	10	A. I was a risk manager, and they offered me
11	A. I started in '96, graduated in 2000. I'm	11	a position in Dallas to relocate for a different
12	sorry. I'm wrong. I started when I got married	12	position. I refused, and they weren't taking my
13	which was '93, and I graduated in '97.	13	advice or the advice of those of us in risk
14	Q. Okay. What was your degree in?	14	management with respect to policy.
15	A. Management.	15	Q. Okay. And did that specifically have to
16	Q. Okay. Before CreditSmarts got started in	16	do with excessive risk in mortgage lending?
4.7	2005 first of all, is 2005 right?	17	A. Yes.
17			 Q. Okay. So, you both didn't want the job
18	A. Correct.	18	
18 19	A. Correct.Q. And what were you doing before that?	19	they were offering you and weren't happy with the
18 19 20	A. Correct.Q. And what were you doing before that?A. What period of time?	19 20	they were offering you and weren't happy with the business that they were doing. Is that a fair
18 19 20 21	A. Correct.Q. And what were you doing before that?A. What period of time?Q. Well, what was your last job before	19 20 21	they were offering you and weren't happy with the business that they were doing. Is that a fair statement?
18 19 20 21 22	A. Correct.Q. And what were you doing before that?A. What period of time?Q. Well, what was your last job beforeCreditSmarts?	19 20 21 22	they were offering you and weren't happy with the business that they were doing. Is that a fair statement? A. Correct.
18 19 20 21 22 23	 A. Correct. Q. And what were you doing before that? A. What period of time? Q. Well, what was your last job before CreditSmarts? A. Consultant. 	19 20 21 22 23	they were offering you and weren't happy with the business that they were doing. Is that a fair statement? A. Correct. MR. GARCIA: Objection.
18 19 20 21 22	A. Correct.Q. And what were you doing before that?A. What period of time?Q. Well, what was your last job beforeCreditSmarts?	19 20 21 22	they were offering you and weren't happy with the business that they were doing. Is that a fair statement? A. Correct.

	145		147
1	A. In 2004, late 2004.	1	MR. GARCIA: Objection.
2	Q. Now, when did Mr. Gomez come on line at	2	Q. (BY MR. PIPER) Do you have any idea what
3	CreditSmarts?	3	the typical success rate was for WestFax when they
4	A. I hired Alex Gomez in 2006, June of 2006,	4	sent faxes?
5	from Manpower temp agency.	5	A. I do not.
6	Q. And what was he doing did you know him	6	Q. Do you have any knowledge about what the
7	before he started working there?	7	size of a typical WestFax broadcast was for
8	A. No.	8	CreditSmarts?
9	Q. What was he doing when he started at	9	A. I don't know.
10	CreditSmarts?	10	Q. Do you know at any point in time, if
11	A. Customer service manager.	11	WestFax faxed your entire database, how many faxes
12	Q. And what were his responsibilities there?	12	they would attempt based on the number of fax
13	A. Handling customer service calls.	13	numbers in your database?
14	Q. Did he hold any jobs between customer	14	A. I do not know.
15	service manager and office manager?	15	Q. Okay. To your knowledge, did you ever
16	A. No.	16	do if a fax was posted with WestFax for sending,
17	Q. When did he become office manager?	17	did everybody to whom it was sent get the same fax?
18	A. After my brother passed away.	18	A. Pardon?
19	Q. And when was that?	19	Q. That is, when you used WestFax to send a
20	A. In 2011.	20	fax, did you just post one image to be the fax for
21	Q. Sorry about that.	21	everybody to get?
22	How many employees are there	22	MR. HAYES: Objection. He's testified
23	currently at CreditSmarts?	23	that he didn't use WestFax, that Alex did.
24	A. Seven; including myself, eight; and my	24	Q. (BY MR. PIPER) Right. But when you saw
25	wife, nine.	25	your brother use WestFax, for example, did you see
1	Q. Okay. What's your wife's position?	1	that he posted an image to be faxed as part of that
2		-	that he posted an image to be laked as part of that
_	A She collects the mail and does some of the	2	
3	A. She collects the mail and does some of the books. She's on the board.	2	process?
3 4	books. She's on the board.	3	process? A. Yes.
4	books. She's on the board. Q. How big is the board?	3 4	process? A. Yes. Q. And was it one image that was going to be
4 5	books. She's on the board. Q. How big is the board? A. Myself and she.	3	process? A. Yes. Q. And was it one image that was going to be faxed to everybody on the Excel spreadsheet?
4 5 6	books. She's on the board. Q. How big is the board? A. Myself and she. Q. Is the current CreditSmarts customer	3 4 5 6	process? A. Yes. Q. And was it one image that was going to be faxed to everybody on the Excel spreadsheet? A. I don't know.
4 5 6 7	books. She's on the board. Q. How big is the board? A. Myself and she. Q. Is the current CreditSmarts customer database about 18,000 people?	3 4 5 6 7	process? A. Yes. Q. And was it one image that was going to be faxed to everybody on the Excel spreadsheet? A. I don't know. Q. Do you know what kind of data format you
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4 5 6 7 8 9 10 11	books. She's on the board. Q. How big is the board? A. Myself and she. Q. Is the current CreditSmarts customer database about 18,000 people? A. Yes. Q. Do you know how many of those entries have fax numbers associated with them? A. I do not know. Q. Okay. Have you ever do you have any knowledge about statistics of your work with WestFax	3 4 5 6 7 8 9 10 11	process? A. Yes. Q. And was it one image that was going to be faxed to everybody on the Excel spreadsheet? A. I don't know. Q. Do you know what kind of data format you used for the fax numbers? Was it Excel, or do you know? A. I don't know. Q. Do you know when you download customer
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4 5 6 7 8 9 10 11 12 13 14	books. She's on the board. Q. How big is the board? A. Myself and she. Q. Is the current CreditSmarts customer database about 18,000 people? A. Yes. Q. Do you know how many of those entries have fax numbers associated with them? A. I do not know. Q. Okay. Have you ever do you have any knowledge about statistics of your work with WestFax such as how many faxes are sent or what their success rate? Do you ever review those? Do you	3 4 5 6 7 8 9 10 11 12 13 14 15	process? A. Yes. Q. And was it one image that was going to be faxed to everybody on the Excel spreadsheet? A. I don't know. Q. Do you know what kind of data format you used for the fax numbers? Was it Excel, or do you know? A. I don't know. Q. Do you know when you download customer information through the Codero database what file format that typically comes out in? A. CSV file. Q. And what is a CSV file?
4 5 6 7 8 9 10 11 12 13 14 15 16	books. She's on the board. Q. How big is the board? A. Myself and she. Q. Is the current CreditSmarts customer database about 18,000 people? A. Yes. Q. Do you know how many of those entries have fax numbers associated with them? A. I do not know. Q. Okay. Have you ever do you have any knowledge about statistics of your work with WestFax such as how many faxes are sent or what their success rate? Do you ever review those? Do you review the account statements typically when they	3 4 5 6 7 8 9 10 11 12 13 14 15 16	process? A. Yes. Q. And was it one image that was going to be faxed to everybody on the Excel spreadsheet? A. I don't know. Q. Do you know what kind of data format you used for the fax numbers? Was it Excel, or do you know? A. I don't know. Q. Do you know when you download customer information through the Codero database what file format that typically comes out in? A. CSV file. Q. And what is a CSV file? A. Comma separated values. Q. And do you know whether, when using
4 5 6 7 8 9 10 11 12 13 14 15 16	books. She's on the board. Q. How big is the board? A. Myself and she. Q. Is the current CreditSmarts customer database about 18,000 people? A. Yes. Q. Do you know how many of those entries have fax numbers associated with them? A. I do not know. Q. Okay. Have you ever do you have any knowledge about statistics of your work with WestFax such as how many faxes are sent or what their success rate? Do you ever review those? Do you review the account statements typically when they come through?	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	process? A. Yes. Q. And was it one image that was going to be faxed to everybody on the Excel spreadsheet? A. I don't know. Q. Do you know what kind of data format you used for the fax numbers? Was it Excel, or do you know? A. I don't know. Q. Do you know when you download customer information through the Codero database what file format that typically comes out in? A. CSV file. Q. And what is a CSV file? A. Comma separated values.
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	149		151
1	(Deposition Exhibit 23 was marked.)	1	company such as an affiliate, a lender possibly,
2	Q. (BY MR. PIPER) Do you recognize this	2	then CreditSmarts would know that when they're
3	document, sir?	3	speaking to that auto dealership, that they are to
4	A. Yes.	4	reference the lender specific.
5	Q. What is this document?	5	Q. And why would they reference the lender?
6	A. It's a snapshot of a CSV file.	6	A. Because the lender added the request for
7	Q. And is this a CSV file that came out of	7	the dealership to be added to the database system.
8	the customer database that's maintained at Codero?	8	Q. Well, I guess my question is you mentioned
9	A. Yes.	9	for compliance purposes. Is it a compliance rule
10	Q. And is this the same format that all the	10	that whenever you talk to a customer that's been
11	CSV files for a particular customer would take for	11	referred by a lender, you have to reference the
12	the Codero database?	12	lender?
13	A. Correct.	13	A. No.
14	Q. Okay. Let's just go through the fields	14	Q. What's the compliance issue that you
15	starting from the first page on the left.	15	just that you want a record that there was a
16	First of all, do you know what the	16 17	reference?
17 18	fields for the database mean? A. Yes.	18	A. Yes. And when the customer service
19	Q. Okay. So, what does the affiliate field	19	managers are talking to the auto dealership, they need to know if any affiliate lender brought that
20	mean?	20	original relationship.
21	A. It would be where the dealership was	21	Q. And a few minutes ago when you talked
22	derived from.	22	about the solicitation database, to be clear, that
23	Q. Meaning how you got the dealer's	23	was the Zoho.com database that you talked about
24	information in the first place?	24	earlier?
25	A. Correct.	25	A. Uh-huh.
	150		152
1	Q. For purposes of solicitation essentially?	1	Q. Okay. Then the next field is "Dealer ID."
2	 A. If it came from a third party not for 	2	What does the dealer ID refer to?
3	purposes of solicitation but for purposes of doing	3	A. The number assigned to the auto dealership
4	auto loans and compliance.	4	when they were entered into CreditSmarts'
5	Q. Okay. Well, when I said "for purposes of	5	participation program.
6	solicitation," I mean would most of the entries	6	Q. And is that a number that's generated by
7	in here have started as a solicitation by	7 8	CreditSmarts?
8 9	A. No.	9	A. Yes.
10	Q CreditSmarts? A. No.	10	Q. Okay. And is that automatically generated when they're entered into the database?
11	Q. Okay. If it started as a solicitation by	11	A. Yes.
I ++	a. Onay. If it started as a solicitation by	1	100.
12	CreditSmarts, would that he reflected in the	12	Q. And, again, that would be when they're
12 13	CreditSmarts, would that be reflected in the affiliate field?	12 13	Q. And, again, that would be when they're entered into the Codero database, not the Zoho
12 13 14	CreditSmarts, would that be reflected in the affiliate field? A. No.		Q. And, again, that would be when they're entered into the Codero database, not the Zoho database?
13	affiliate field?	13	entered into the Codero database, not the Zoho
13 14	affiliate field? A. No.	13 14	entered into the Codero database, not the Zoho database?
13 14 15	affiliate field? A. No. Q. Okay. So, what sorts of things would be	13 14 15	entered into the Codero database, not the Zoho database? A. Correct.
13 14 15 16	affiliate field? A. No. Q. Okay. So, what sorts of things would be reflected in the affiliate field?	13 14 15 16	entered into the Codero database, not the Zoho database? A. Correct. Q. What do you call the Codero database?
13 14 15 16 17	affiliate field? A. No. Q. Okay. So, what sorts of things would be reflected in the affiliate field? A. If the customer record and this is a	13 14 15 16 17	entered into the Codero database, not the Zoho database? A. Correct. Q. What do you call the Codero database? A. The CreditSmarts database.
13 14 15 16 17 18	affiliate field? A. No. Q. Okay. So, what sorts of things would be reflected in the affiliate field? A. If the customer record and this is a customer record, not a solicitation record. There's	13 14 15 16 17 18	entered into the Codero database, not the Zoho database? A. Correct. Q. What do you call the Codero database? A. The CreditSmarts database. Q. And what do you call the Zoho database?
13 14 15 16 17 18 19	affiliate field? A. No. Q. Okay. So, what sorts of things would be reflected in the affiliate field? A. If the customer record and this is a customer record, not a solicitation record. There's two different things.	13 14 15 16 17 18 19	entered into the Codero database, not the Zoho database? A. Correct. Q. What do you call the Codero database? A. The CreditSmarts database. Q. And what do you call the Zoho database? A. Solicitation database.
13 14 15 16 17 18 19 20	affiliate field? A. No. Q. Okay. So, what sorts of things would be reflected in the affiliate field? A. If the customer record and this is a customer record, not a solicitation record. There's two different things. CreditSmarts has a solicitation	13 14 15 16 17 18 19 20	entered into the Codero database, not the Zoho database? A. Correct. Q. What do you call the Codero database? A. The CreditSmarts database. Q. And what do you call the Zoho database? A. Solicitation database. Q. Throughout the deposition I've probably
13 14 15 16 17 18 19 20 21	affiliate field? A. No. Q. Okay. So, what sorts of things would be reflected in the affiliate field? A. If the customer record and this is a customer record, not a solicitation record. There's two different things. CreditSmarts has a solicitation database where they call. If there's an auto	13 14 15 16 17 18 19 20 21	entered into the Codero database, not the Zoho database? A. Correct. Q. What do you call the Codero database? A. The CreditSmarts database. Q. And what do you call the Zoho database? A. Solicitation database. Q. Throughout the deposition I've probably talked about the customer database. Have you always
13 14 15 16 17 18 19 20 21 22	affiliate field? A. No. Q. Okay. So, what sorts of things would be reflected in the affiliate field? A. If the customer record and this is a customer record, not a solicitation record. There's two different things. CreditSmarts has a solicitation database where they call. If there's an auto dealership that requested to be on the participating	13 14 15 16 17 18 19 20 21 22	entered into the Codero database, not the Zoho database? A. Correct. Q. What do you call the Codero database? A. The CreditSmarts database. Q. And what do you call the Zoho database? A. Solicitation database. Q. Throughout the deposition I've probably talked about the customer database. Have you always understood that I was referring to what you call the

153 155 1 A. If they're a corporation or not and their 1 29071 -- have any meaning other than being a 2 2 randomly generated number? corresponding corporate number. 3 A. It's a unique identifier. 3 Q. Okay. Then there's years in business 4 4 Q. Are those generated in sequential order which I guess would mean how long has the dealership 5 for when somebody goes into the database? 5 been in business. DMV, what does that refer to? A. Their DMV license. 6 A. Yes. 6 7 Q. Okay. So, the next field is dealer name 7 Q. And is that something that should be 8 which, you know, means what it says presumably. 8 filled in? 9 Then the next field is "Contact." What would go in 9 A. It usually isn't. 10 the contact field? 10 Q. It usually is not. Okay. 11 A. Primary contact. 11 Tax ID, that would be the TIN for the 12 Q. So, that would be the name of a human 12 business? 13 being? 13 A. (Nods head.) 14 A. Correct. 14 Q. Flooring, what does that mean? 15 Q. What does it mean that here there is no 15 A. Who their credit facility is with. 16 name for a human being? 16 Q. And what does that mean? A. That's unusual. Should be filled out. 17 17 A. Every auto dealership usually has a credit 18 Q. By the way, where it says "Branch," what facility that allows them to buy vehicles wholesale 19 would go under that? That's the third field. 19 on credit. 2.0 A. If the auto dealership had multiple 20 Q. Okay. Is that usually a line of credit --21 21 A. Yes. 22 Q. And if a dealership had multiple locations 22 Q. -- or a letter of credit or -- yeah, a 23 but there's nothing under Branch, what would that 23 line of credit. 24 signify? 24 A. It's a line of credit. 25 A. It would signify that the customer sales 25 Q. Okay. 154 156 1 1 rep did not identify multiple branches or didn't A. Theoretically all these should be filled 2 assign them. 2 out. 90 percent of the time they're not. 3 3 Q. Okay. And then there's address, city, Q. AverageSa, what does that mean on the next state, ZIP which presumably would be the address for 4 page after the several flooring entries? 4 5 5 this particular customer. A. Sale -- average sale. 6 Would those fields be populated 6 Q. Average sales. Okay. And login and 7 manually by the representative of CreditSmarts who 7 password, what do those mean? Would that be for 8 was talking to the customer, or would they auto fill 8 access to the CreditSmarts.com Web site? 9 9 if it was --A. No. That would be for access -- if 10 10 A. No. they're using MicroBilt, which is a third-party decision engine -- credit engine that CreditSmarts 11 Q. It would always be manual? 11 12 uses, that would be their attributed user name and A. Manual. 12 13 Q. Other than the dealer ID, are there any of 13 14 these fields that would auto fill? 14 Q. And would that be something that 15 A. No. 15 CreditSmarts would create for them, or would that be 16 Q. Okay. I'll move along a little bit. 16 something they would have before this initial --17 So, then dealer type, is there a 17 A. They would never have it. That would be 18 18 multiple choice set of dealer types; or is that -encrypted. A. Franchise or independent. Q. When would those -- when would those login 19 19 and passwords be created? 20 Q. So, there's only two options that would 20 21 get filled under dealer type. 21 A. When their credit bureau access became 22 Then there's something on this 22 available. 23 printout that says either LL or IIca. Do you know 23 Q. Okay. And when would that happen in the what that refers to? I'm on the page that has 24 24 process? 25 25 dealer type. A. If they were an active paying auto

157 159 1 dealership. 1 I do know there was a period when --2 2 Q. Then the next says MicroBilt. What does well, after that initial call where you and I talked 3 3 and I told you I'd be happier talking to a lawyer, 4 A. That's their MicroBilt credit bureau code. 4 later the three of us -- meaning me; your attorney, Q. Then it says create date. What is the 5 Bill Hayes; and you -- had a conversation where I 6 create date? 6 was allowed to interview you off the record about 7 A. The date that the record was created in 7 some information, correct? 8 8 CreditSmarts, entered. A. (Nods head.) 9 Q. Would that be the date of the first 9 Q. And it became -- do you recall during that 10 creation? 10 conversation that there was an issue as to whether 11 A. Yes. 11 some things that you had given the Gibbons firm 12 Q. Would that fill automatically, or would 12 hadn't been conveyed to me? 13 that be manually entered? 13 A. That's why they were released. 14 A. That's automatic. 14 Q. Right. So, now that you remember that, Q. So, what this reflects is the first 15 15 I'm not sure that they gave -- this may be another 16 communication that anyone at CreditSmarts allegedly 16 thing that they didn't give me, but I may be wrong had with City Select would have been on 17 about that. 17 November 4th, 2011; is that correct? 18 18 So, having said that the Gibbons firm 19 A. No. 19 was supposed to give me those invoices, do you 20 Q. Okay. So, what is the create date 20 recall -- do you recall the names of any of those 11/4/2011 mean? 21 2.1 vendors that you used for making the solicitation 22 A. That would be the date that a CreditSmarts 22 calls? 23 23 representative gained authorization for the auto A. No. 24 dealership to become a partner of CreditSmarts. 24 MR. GARCIA: Objection. 25 Q. Okay. 25 MR. HAYES: As soon as I get the receipts, 158 160 1 A. They may have solicited them back in 2005. 1 we'll send you either the first copy or another 2 They should have. I paid a telemarketing firm to 2 3 speak with every dealership in the country. 3 A. IntelliSure is one of them. Q. How many times did they make those calls 4 Q. (BY MR. PIPER) Okay. IntelliSure. I 4 5 5 from 2005 to present? mean, it's not the biggest deal in the world. I'm 6 A. They'll go through the entire dealer list 6 just trying to -- and were there -- did you -- I 7 every six months. They're supposed to call between 7 guess what I'm trying to get at is between the three 8 80 to 120 dealerships a day. 8 firms and the five people or so at CreditSmarts that Q. Who is the outside vendor that you've used 9 9 were making solicitation calls, was it one at a time 10 10 for that? or was it one outside firm plus the internal people A. I've used three different outside vendors, 11 11 or how did you divide that up? I assume you and internally we have -- CreditSmarts has five wouldn't have more than one vendor making calls at 12 12 13 people presently doing that. 13 the same time, but maybe I'm wrong. Did you ever 14 Q. Who are the outside vendors? 14 have more than one vendor making cold calls at the 15 A. There's a company -- I've given you the 15 same time? 16 16 A. No. Internally and the vendor, yes. receipts. Q. Okay. Do you remember the names? 17 17 Q. Did you generally have both outside vendors and internal people at the same time making 18 A. I don't. 18 19 Q. Okay. And sitting here I don't know if I calls? 19 20 did get those receipts or if I knew what they were. 20 A. I couldn't afford that, no. 21 Do you know if you produced them? 21 Q. So, typically if you were using the people 22 A. Gibbons did. 22 internally, you didn't have an outside vendor? 23 Q. Gibbons produced them. Okay. I'm not 23 A. No. We would use them concurrently. sure that they produced them either, but they may 24 Q. You would use them both? 24 25 have. A. Yes.

	404		400
	161		163
1	Q. Okay. What was it you were saying you	1	vendor?
2	couldn't afford?	2	A. No. In this case there was no outside
3	A. If we ran that 365 days of the year, I	3	vendor.
4	could never afford that.	4	Q. Okay. So, if an outside vendor creates a
5	Q. So, from to time they're both doing it but	5	subscriber, do they have to then convey that
6	not all the time; is that correct?	6	information to CreditSmarts so that a CreditSmarts
7	A. Correct.	7	employee can manually underwrite it?
8	Q. Okay. So, the create date means that	8	A. Correct.
9	A. There was an interested party at City	9	Q. Now, do you know what status CreditSmarts
10	Select who gave verbal authorization to receive	10	had City Select as when the creation date took
11	information and to become a partner of CreditSmarts.	11	place?
12	Q. Okay. And by "partner of CreditSmarts"	12	A. I do not.
13	you don't mean	13	Q. Is that reflected in these records?
14	A. A subscriber.	14	A. No.
15	Q. A subscriber. Okay. And what is a	15	Q. Can you start out as an inactive
16	subscriber of CreditSmarts?	16	subscriber?
17	A. There are three different statuses.	17	A. Yes.
18	There's a paying subscriber who receives the credit	18	Q. What is an inactive subscriber?
19	bureau access; the compliance package of which	19	A. An auto dealership that has engaged a
20	includes fraud alerts, terrorist alerts, and the	20	CreditSmarts representative for information but is
21	application of storage and, of course, access to	21	not does not have the ability to process a credit
22	finance. There is the free no credit status which	22	application.
23	means they have access to the CreditSmarts system	23	Q. Okay. So so, if somebody said, Yeah,
24	absent the fraud alerts, absent the compliance	24	you can send me something just to be polite, they
25	package with minimal filtering which	25	would be entered how would you know whether to
	162		164
1	Q. What does "minimal filtering" mean?	1	164 enter them as inactive or free no credit?
1 2		1 2	
	Q. What does "minimal filtering" mean?		enter them as inactive or free no credit?
2	Q. What does "minimal filtering" mean?A. They would not the applications would	2	enter them as inactive or free no credit? MR. GARCIA: Objection.
2	Q. What does "minimal filtering" mean?A. They would not the applications would not be filtered by credit. They would be filtered	2	enter them as inactive or free no credit? MR. GARCIA: Objection. A. They would in order to get into this
2 3 4	Q. What does "minimal filtering" mean?A. They would not the applications would not be filtered by credit. They would be filtered by other demographics.	2 3 4	enter them as inactive or free no credit? MR. GARCIA: Objection. A. They would in order to get into this database, they would have had to have done more than
2 3 4 5	 Q. What does "minimal filtering" mean? A. They would not the applications would not be filtered by credit. They would be filtered by other demographics. Q. So, once somebody is has a created 	2 3 4 5	enter them as inactive or free no credit? MR. GARCIA: Objection. A. They would in order to get into this database, they would have had to have done more than just say, Yeah, send me something. They would have
2 3 4 5 6	 Q. What does "minimal filtering" mean? A. They would not the applications would not be filtered by credit. They would be filtered by other demographics. Q. So, once somebody is has a created A. There's a third status. 	2 3 4 5 6	enter them as inactive or free no credit? MR. GARCIA: Objection. A. They would in order to get into this database, they would have had to have done more than just say, Yeah, send me something. They would have to have engaged in conversation and the process of
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2 3 4 5 6 7 8 9	 Q. What does "minimal filtering" mean? A. They would not the applications would not be filtered by credit. They would be filtered by other demographics. Q. So, once somebody is has a created A. There's a third status. Q. Okay. Why don't you go ahead? A. And that's inactive. Q. Okay. So, can you start submitting loan applications without paying money to CreditSmarts? 	2 3 4 5 6 7 8 9	enter them as inactive or free no credit? MR. GARCIA: Objection. A. They would in order to get into this database, they would have had to have done more than just say, Yeah, send me something. They would have to have engaged in conversation and the process of setting their store up as a participating, ideally active, auto dealership. They would have been spoken to about any number of partner programs such as the area where we discuss credit facility,
2 3 4 5 6 7 8 9 10	 Q. What does "minimal filtering" mean? A. They would not the applications would not be filtered by credit. They would be filtered by other demographics. Q. So, once somebody is has a created A. There's a third status. Q. Okay. Why don't you go ahead? A. And that's inactive. Q. Okay. So, can you start submitting loan applications without paying money to CreditSmarts? A. Yes. 	2 3 4 5 6 7 8 9 10	enter them as inactive or free no credit? MR. GARCIA: Objection. A. They would in order to get into this database, they would have had to have done more than just say, Yeah, send me something. They would have to have engaged in conversation and the process of setting their store up as a participating, ideally active, auto dealership. They would have been spoken to about any number of partner programs such as the area where we discuss credit facility, flooring. Those are all items that our customer
2 3 4 5 6 7 8 9 10 11	 Q. What does "minimal filtering" mean? A. They would not the applications would not be filtered by credit. They would be filtered by other demographics. Q. So, once somebody is has a created A. There's a third status. Q. Okay. Why don't you go ahead? A. And that's inactive. Q. Okay. So, can you start submitting loan applications without paying money to CreditSmarts? A. Yes. Q. And what's the name of that status? 	2 3 4 5 6 7 8 9 10 11	enter them as inactive or free no credit? MR. GARCIA: Objection. A. They would in order to get into this database, they would have had to have done more than just say, Yeah, send me something. They would have to have engaged in conversation and the process of setting their store up as a participating, ideally active, auto dealership. They would have been spoken to about any number of partner programs such as the area where we discuss credit facility, flooring. Those are all items that our customer service managers are to review.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15	 Q. What does "minimal filtering" mean? A. They would not the applications would not be filtered by credit. They would be filtered by other demographics. Q. So, once somebody is has a created A. There's a third status. Q. Okay. Why don't you go ahead? A. And that's inactive. Q. Okay. So, can you start submitting loan applications without paying money to CreditSmarts? A. Yes. Q. And what's the name of that status? A. Free no credit. Q. Free no credit. Okay. What does the no credit mean? 	2 3 4 5 6 7 8 9 10 11 12 13 14 15	enter them as inactive or free no credit? MR. GARCIA: Objection. A. They would in order to get into this database, they would have had to have done more than just say, Yeah, send me something. They would have to have engaged in conversation and the process of setting their store up as a participating, ideally active, auto dealership. They would have been spoken to about any number of partner programs such as the area where we discuss credit facility, flooring. Those are all items that our customer service managers are to review. Some auto dealerships are going to be buy here, pay here which means they finance themselves. They may not need our the
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	 Q. What does "minimal filtering" mean? A. They would not the applications would not be filtered by credit. They would be filtered by other demographics. Q. So, once somebody is has a created A. There's a third status. Q. Okay. Why don't you go ahead? A. And that's inactive. Q. Okay. So, can you start submitting loan applications without paying money to CreditSmarts? A. Yes. Q. And what's the name of that status? A. Free no credit. Q. Free no credit. Okay. What does the no credit mean? A. There's no credit bureau required. Q. Okay. Now, what is the next field which is update date? 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	enter them as inactive or free no credit? MR. GARCIA: Objection. A. They would in order to get into this database, they would have had to have done more than just say, Yeah, send me something. They would have to have engaged in conversation and the process of setting their store up as a participating, ideally active, auto dealership. They would have been spoken to about any number of partner programs such as the area where we discuss credit facility, flooring. Those are all items that our customer service managers are to review. Some auto dealerships are going to be buy here, pay here which means they finance themselves. They may not need our the CreditSmarts finance program, but they might need the compliance package. They might need the Web site. They might need access or referrals to credit
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	 Q. What does "minimal filtering" mean? A. They would not the applications would not be filtered by credit. They would be filtered by other demographics. Q. So, once somebody is has a created A. There's a third status. Q. Okay. Why don't you go ahead? A. And that's inactive. Q. Okay. So, can you start submitting loan applications without paying money to CreditSmarts? A. Yes. Q. And what's the name of that status? A. Free no credit. Q. Free no credit. Okay. What does the no credit mean? A. There's no credit bureau required. Q. Okay. Now, what is the next field which is update date? A. That is when the record was last updated by a customer service manager. 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	enter them as inactive or free no credit? MR. GARCIA: Objection. A. They would in order to get into this database, they would have had to have done more than just say, Yeah, send me something. They would have to have engaged in conversation and the process of setting their store up as a participating, ideally active, auto dealership. They would have been spoken to about any number of partner programs such as the area where we discuss credit facility, flooring. Those are all items that our customer service managers are to review. Some auto dealerships are going to be buy here, pay here which means they finance themselves. They may not need our the CreditSmarts finance program, but they might need the Web site. They might need access or referrals to credit facilities for their buy here, pay here; and they might need a collection software.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	 Q. What does "minimal filtering" mean? A. They would not the applications would not be filtered by credit. They would be filtered by other demographics. Q. So, once somebody is has a created A. There's a third status. Q. Okay. Why don't you go ahead? A. And that's inactive. Q. Okay. So, can you start submitting loan applications without paying money to CreditSmarts? A. Yes. Q. And what's the name of that status? A. Free no credit. Q. Free no credit. Okay. What does the no credit mean? A. There's no credit bureau required. Q. Okay. Now, what is the next field which is update date? A. That is when the record was last updated by a customer service manager. Q. Now, could the could the creation date 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	enter them as inactive or free no credit? MR. GARCIA: Objection. A. They would in order to get into this database, they would have had to have done more than just say, Yeah, send me something. They would have to have engaged in conversation and the process of setting their store up as a participating, ideally active, auto dealership. They would have been spoken to about any number of partner programs such as the area where we discuss credit facility, flooring. Those are all items that our customer service managers are to review. Some auto dealerships are going to be buy here, pay here which means they finance themselves. They may not need our the CreditSmarts finance program, but they might need the compliance package. They might need the Web site. They might need access or referrals to credit facilities for their buy here, pay here; and they might need a collection software. Q. Okay. The next field is create use. What
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 Q. What does "minimal filtering" mean? A. They would not the applications would not be filtered by credit. They would be filtered by other demographics. Q. So, once somebody is has a created A. There's a third status. Q. Okay. Why don't you go ahead? A. And that's inactive. Q. Okay. So, can you start submitting loan applications without paying money to CreditSmarts? A. Yes. Q. And what's the name of that status? A. Free no credit. Q. Free no credit. Okay. What does the no credit mean? A. There's no credit bureau required. Q. Okay. Now, what is the next field which is update date? A. That is when the record was last updated by a customer service manager. Q. Now, could the could the creation date creation be does a CreditSmarts employee have to 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	enter them as inactive or free no credit? MR. GARCIA: Objection. A. They would in order to get into this database, they would have had to have done more than just say, Yeah, send me something. They would have to have engaged in conversation and the process of setting their store up as a participating, ideally active, auto dealership. They would have been spoken to about any number of partner programs such as the area where we discuss credit facility, flooring. Those are all items that our customer service managers are to review. Some auto dealerships are going to be buy here, pay here which means they finance themselves. They may not need our the CreditSmarts finance program, but they might need the compliance package. They might need the Web site. They might need access or referrals to credit facilities for their buy here, pay here; and they might need a collection software. Q. Okay. The next field is create use. What does create use mean?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 Q. What does "minimal filtering" mean? A. They would not the applications would not be filtered by credit. They would be filtered by other demographics. Q. So, once somebody is has a created A. There's a third status. Q. Okay. Why don't you go ahead? A. And that's inactive. Q. Okay. So, can you start submitting loan applications without paying money to CreditSmarts? A. Yes. Q. And what's the name of that status? A. Free no credit. Q. Free no credit. Okay. What does the no credit mean? A. There's no credit bureau required. Q. Okay. Now, what is the next field which is update date? A. That is when the record was last updated by a customer service manager. Q. Now, could the could the creation date creation be does a CreditSmarts employee have to be involved to actually create the database entry? 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	enter them as inactive or free no credit? MR. GARCIA: Objection. A. They would in order to get into this database, they would have had to have done more than just say, Yeah, send me something. They would have to have engaged in conversation and the process of setting their store up as a participating, ideally active, auto dealership. They would have been spoken to about any number of partner programs such as the area where we discuss credit facility, flooring. Those are all items that our customer service managers are to review. Some auto dealerships are going to be buy here, pay here which means they finance themselves. They may not need our the CreditSmarts finance program, but they might need the compliance package. They might need the Web site. They might need access or referrals to credit facilities for their buy here, pay here; and they might need a collection software. Q. Okay. The next field is create use. What does create use mean? A. Create user.

	165		167
1	A. That's cut off. There's a user behind	1	records?
2	that.	2	A. No.
3	Q. So, what would this be? Creating a user	3	Q. They were paid strictly on a what, on a
4	identity for the system?	4	time basis?
5	A. Who created the user. That was Carlos	5	A. Yes.
6	Perez.	6	Q. And update user, what what would that
7	Q. And, so, what does it mean to say	7	field say if we ran it out?
8	that Carlos well, first of all, what you mean is	8	A. That's the user field for which employee
9	if the whole field was there for csmarts-ir (sic)	9	has updated the record last.
10	and you went on, somewhere there it would tell you	10	Q. And do you know who that was under this
11	that Carlos Perez created	11	client?
12	A. The record.	12	A. Yes. That was LaMonica Skeet (phonetic).
13	Q the record?	13	Q. And is she still with the company?
14	And what does that mean?	14	A. Correct no, she's not. She left on
15	 It means he created the record. 	15	maternity leave.
16	Q. Okay. Would he be the person that created	16	Q. Do you know when she left?
17	the record on the create date?	17	A. 2012.
18	A. Correct.	18	Q. Okay. Did you ever have a chance to talk
19	 Q. And would that field be auto filled or 	19	to her about City Select Auto?
20	would that be manually?	20	A. We did.
21	A. It's auto filled.	21	Q. And what did she tell you?
22	Q. So, basically it was Carlos Perez' login	22	 A. She didn't recall any specifics, but she
23	that was creating the records, that was	23	was the person on record. It was most likely her
24	automatically filled in?	24	that updated the record.
25	A. Yes.	25	Q. Okay. And is that all she knew about it
	166		168
1	Q. Does he still work at CreditSmarts?	1	based on what she told you?
2	A. No.	2	A. Yes.
3	Q. When did he leave?	3	Q. Okay. The next entry, I'm not sure I can
4	A. I don't recall.	4	read it. It says, Row Version. Did I read that
5	Q. Did you ever have a chance to talk to	5	right?
6	Carlos Perez about City Select Autos?	6	A. Yes.
7	A. No.	7	Q. What is that field for?
8	Q. How were the CreditSmarts employees that	8	A. It's table relational. It's benign.
9	created these paid?	9	Q. I'm not sure I know what that means, but
10	 A. They're paid hourly and they're given 	10	basically it's something about database formatting
11	bonuses by either how many minutes per day they talk	11	or something like that?
12	to auto dealerships, either inbound or outbound, for	12	A. Yes.
13	customer service and/or they're paid by bonus based	13	Q. That says, Activated True. What does
14	on the number of auto dealerships that they sign up	14	activated mean?
15	for the full active service.	15	A. They've had a record activated in the
16	Q. Okay. So, there was a financial incentive	16	CreditSmarts database.
17	for the CreditSmarts employees to create these	17	Q. And is that the same as create date?
	records; is that correct?	18	A. Yes.
18	Only an active record.	19	Q. And would that auto fill automatically?
19	0 0-1		A. Correct.
19 20	Q. Only an active record. Okay.	20	
19 20 21	Was there any financial incentive for	21	Q. And are there basically two variables
19 20 21 22	Was there any financial incentive for the employees to create inactive records?	21 22	Q. And are there basically two variables there, true or false?
19 20 21 22 23	Was there any financial incentive for the employees to create inactive records? A. No.	21 22 23	Q. And are there basically two variables there, true or false?A. Yes.
19 20 21 22	Was there any financial incentive for the employees to create inactive records?	21 22	Q. And are there basically two variables there, true or false?

	169		171
1	identifier. There's a three-step login process:	1	Q. Okay. Now, is that unusual in your
2	The prefix, the user name, and the pass code.	2	experience?
3	Q. Okay. And what's would you have a	3	A. No.
4	login if you were an inactive member from the start?	4	Q. Okay. Then it says Banking A. What does
5	A. No.	5	that mean?
6	Q. Would you have a login if you were free no	6	A. That would be their bank account.
7	credit at the start?	7	Q. And AWE guide?
8	A. Yes.	8	A. That would be the AutoWebExperts which
9	Q. Okay. Would you have a login if you were	9	would be the unique identifier if CreditSmarts is
10	a paying customer?	10	hosting a Web site for them, for the dealership.
11	A. Yes.	11	Q. So, one of the services you provide is to
12	Q. Okay.	12	help dealerships set up Web sites?
13	A. However, if they become inactive, they	13	A. Yes. We try to professionalize the
14	would not.	14	industry vertical, and you can be an inactive auto
15	Q. Okay. So, at any given time the fact that	15	dealership and have a Web site.
16	it's blank simply means as of now they don't have a	16	Q. Okay. Form CO?
17	login?	17	A. I don't have a clue.
18	A. Correct.	18	Q. Okay. Credit something?
19	Q. And that could have been an active member	19	A. Credit preference.
20	who became inactive?	20	Q. Okay. What does that mean?
21	A. Correct.	21	A. Whether they prefer Experion, Transunion,
22	Q. Affiliate ID, what does that mean?	22	or Equifax as a primary.
23	A. Going back to the Column 1, affiliate,	23	Q. Force MI?
24	that's a unique identifier.	24	A. Force MicroBilt. That's if they are
25	Q. So, would the name of the affiliate appear	25	absent a connection to the bureaus, CreditSmarts
			<u>, </u>
	170		172
1	under affiliate if there was an affiliate	1	forces an override to the Micro credit system.
2	A. Yes.	2	Q. And false means what?
3	Q where is says N/A here?	3	A. They do not have a forced MicroBilt
4	A. Correct.	4	connection.
5	Q. Would that be a name or an identifier?	5	Q. Year est, is that the year established for
6	A. It would be a name.	6	the business?
7	 Q. And here it would be reflected as a 	7	A. Yes.
8	number?	8	Q. Dealer status inactive?
9	A. Correct.	9	A. Yes.
10	Q. Now, if do these fields allow multiple	10	Q. And that just means one of the three that
11	entries? Suppose there were several updates by	11	you described?
12	different people, could you	12	A. Right.
13	A. No.	13	Q. And does every entry in the database have
14	Q reflect that?	14	one of those three under dealer status?
		15	A. Yes.
15	So, it would be the last person to		
15 16	update it?	16	Q. Is that auto filled initially?
	update it? A. Correct.	17	A. No. It's one of the three.
16	update it? A. Correct. Q. Then it's credit something?	17 18	A. No. It's one of the three.Q. Okay. But if the person creating the
16 17	update it? A. Correct. Q. Then it's credit something? A. Transunion, Equifax, and Experion.	17	A. No. It's one of the three.Q. Okay. But if the person creating the record forgets to fill in that column
16 17 18	update it? A. Correct. Q. Then it's credit something? A. Transunion, Equifax, and Experion. Q. So, these are the names of credit	17 18	 A. No. It's one of the three. Q. Okay. But if the person creating the record forgets to fill in that column A. It's a mandatory field.
16 17 18 19	update it? A. Correct. Q. Then it's credit something? A. Transunion, Equifax, and Experion.	17 18 19 20 21	 A. No. It's one of the three. Q. Okay. But if the person creating the record forgets to fill in that column A. It's a mandatory field. Q. So, they have to pick one. It doesn't
16 17 18 19 20	update it? A. Correct. Q. Then it's credit something? A. Transunion, Equifax, and Experion. Q. So, these are the names of credit	17 18 19 20 21 22	 A. No. It's one of the three. Q. Okay. But if the person creating the record forgets to fill in that column A. It's a mandatory field.
16 17 18 19 20 21	update it? A. Correct. Q. Then it's credit something? A. Transunion, Equifax, and Experion. Q. So, these are the names of credit agencies? A. Correct. Q. And what does false mean under those?	17 18 19 20 21 22 23	 A. No. It's one of the three. Q. Okay. But if the person creating the record forgets to fill in that column A. It's a mandatory field. Q. So, they have to pick one. It doesn't default to inactive? A. Correct.
16 17 18 19 20 21 22	update it? A. Correct. Q. Then it's credit something? A. Transunion, Equifax, and Experion. Q. So, these are the names of credit agencies? A. Correct.	17 18 19 20 21 22	 A. No. It's one of the three. Q. Okay. But if the person creating the record forgets to fill in that column A. It's a mandatory field. Q. So, they have to pick one. It doesn't default to inactive?

changed from active, inactive, or free no credit. Q. Okay, So, does that mean that before February 15th, 2012 City Select had a different status? A. Yes. Q. Okay. And do you know what status they had before that? A. It would have been either – there's no record of it – either free no credit or active. If the same thing as inactive. It's a 30-day trial. If the 30-day trial and then became inactive? A. They set no substantive content? It's something about the structure of the database thing, If a content that City Select now any records that CreditSmarts did that? A. They get to use the system for free for 30 days. Q. Okay. And you don't have any information that City Select ever paid for any been information that City Select ever paid for any that is an ACH billing system. Q. Okay. Form CO? A. It's a benign data relation. Q. It's another database thing, It's another datab		173		175
2 Q. Okay, So, does that mean that before 3 February 15th, 2012 City Select had a different 4 status? 5 A. Yes. 6 Q. Okay, And do you know what status they 7 had before that? 8 A. It would have been either — there's no 9 record of it — either free no credit or active. 10 There's a fourth status. I forgot. 11 If s the same thing as inactive. It's a 30-day 12 trial. 13 Q. Okay, Is it possible that CreditSmarts 14 got the 30-day trial and then became inactive? 15 A. They get to use the system for free for 30 19 days. 16 Q. What does the 30-day trial mean? 17 Q. What does the 30-day trial mean? 18 A. They get to use the system for free for 30 19 days. 20 Q. And the same as a paying member? 21 A. Yes. 22 Q. Now, do you have any records that 23 CreditSmarts did that? 24 A. No. 25 Q. Would you have a record if CreditSmarts 18 had accessed the system? 2 A. No. 3 Q. Would you have a record if CreditSmarts 24 A. No. 3 Q. Would you have a record if CreditSmarts 25 A. Yes. 4 A. Yes. 5 A. Yes. 6 Q. Do you have any — 7 A. CreditSmarts doesn't submit the 8 applications. The dealership does. 9 Q. I'm next field is "Zimple money. That is an ACH billing 9 system. 9 A. It's a benign data relation. 0 A. It's another database thing. 10 It's another database thing. 11 Rate plan — by benign you mean it also no substantive content? It's something about 1 the same label and then became inactive? 14 A. Correct. It's a table relationship. 15 A. They yet to use the system for free for 30 days. 16 Q. What does the 30-day trial mean? 17 A. No. 28 Q. Would you have any records that 29 days and 19 days and 19 days. 29 Q. In any thing the properties of the properties of the paying spen month or once a year. 16 A. They have not. 17 A. No. 18 A. No. 29 Q. In any thing the properties of the properties of the paying spen month or once a year. 19 A. No. 20 Q. Would you have a record if CreditSmarts 20 Q. Would you have a record of that City Select had submitted applications. 21 A. No. 22 Q. Would you have a record of that City Select had submitted	1	changed from active, inactive, or free no credit	1	Q. And do you have any information that City
February 15th, 2012 City Select had a different status? A. Yes. C. Okay. And do you know what status they had before that? A. It would have been either — there's no record of it — either free no credit or active. There's a fourth status. [Yogot.] If sithe same thing as inactive. It's a 30-day to the same status and the became inactive? A. That's the most popular form of dealer interaction. C. What does the 30-day trial mean? A. That's the most popular form of dealer interaction. C. What does the 30-day trial mean? A. They get to use the system for free for 30 days. C. Q. Naw, do you have any records that CreditSmarts did that? CreditSmarts did that? A. No. CreditSmarts did that? A. No. CreditSmarts did that? A. No. CreditSmarts did base a paying member? A. No. CreditSmarts doesn't submitted applications? A. Yes. A. No. CreditSmarts doesn't submit the applications. The dealership does. A. Yes. A. Yes. A. Yes. A. No. CreditSmarts doesn't submit the applications. The dealership does. A. Yes. A. Yes. A. Yes. A. No. CreditSmarts doesn't submit the applications. The dealership does. A. Yes. A. Yes. A. Yes. A. Yes. A. No. CreditSmarts doesn't submit the applications. The dealership does. A. They have not. A. Correct. It's a table relationship. A. That would be if they re paying \$99 per month or once a year. A. That would be if they re paying \$99 per month or once a year. A. No. C. Okay. And you don't have any information that they didn't paying the emergent services account. If they had paid, I would you have a record of that? 174 A. Ido not. 175 A. I'wouldn't. I wouldn't. A. I'wouldn't. I wouldn't. A. No. C. Okay. So, there's nothing at all in this record that filed they repaying \$10 per paying \$10 per pay				
4 Q. The next field is "ZimpleMo." What does that mean? 6 Q. Okay. And do you know what status they had before that? 8 A. It would have been either — there's no record of it — either free no credit or active. 9 record of it — either free no credit or active. 10 There's a fourth status. It's a 30-day 11 It's the same thing as inactive. It's a 30-day 12 trial. 13 Q. Okay. Is it possible that CreditSmarts got the 30-day trial and then became inactive? 14 A. That's the most popular form of dealer interaction. 17 Q. What does the 30-day trial mean? 18 A. They get to use the system for free for 30 days. 19 Q. And the same as a paying member? 21 A. Yes. 22 Q. Now, do you have any records that 23 CreditSmarts did that? 23 CreditSmarts did that? 24 A. No. 25 Q. Would you have a record if CreditSmarts had submitted applications? 26 Q. Would you have a record if CreditSmarts had submitted applications? 27 A. CreditSmarts doesn't submit the applications. The dealership does. 28 Q. Im next field is "ZimpleMo." What does that mean? 29 A. Tree yet our sether interers no record of it in the properties and the properties in active. It's a subscriber status and the properties in the most popular form of dealer interaction. 29 Q. Would you have a record if CreditSmarts and the properties in the most popular form of dealer interaction. 30 Q. Would you have a record if CreditSmarts and the properties in the most popular form of dealer interaction. 31 A. No. 32 Q. Would you have a record if CreditSmarts and the properties in the properties in the most popular form of dealer interaction. 32 Q. Would you have a record if CreditSmarts and the properties in the most popular form of dealer interaction. 33 Q. Would you have a record if CreditSmarts and the properties in the most popular form of dealer interaction. 34 A. No. 35 Q. Would you have a record if CreditSmarts and the properties in the most popular form of dealer interaction. 36 Q. Would you have a record if CreditSmarts? 37 Q. Would that field get populated when they initially s	3			
5 A. Yes. 6 Q. Okay. And do you know what status they had before that? 7 had before that? 8 A. It would have been either — there's no record of it — either free no credit or active. 10 There's a fourth status. I forgot. 11 It's the same thing as inactive. It's a 30-day tail it's a got the 30-day trial and then became inactive? 15 A. That's the most popular form of dealer interaction. 16 interaction. 17 Q. What does the 30-day trial mean? 18 A. They get to use the system for free for 30 days. 20 Q. And the same as a paying member? 21 A. Yes. 22 Q. Now, do you have any records that 23 CreditSmarts did that? 23 CreditSmarts did that? 24 A. No. 25 Q. Would you have a record if CreditSmarts had submitted applications? 26 A. Yes. 27 Q. Would you have a record if CreditSmarts had submitted applications? 28 A. Yes. 39 Q. I'm sorry. Would you have a record if City Select ever paid for any type of subscribers have made? 40 A. Yes. 41 A. Yes. 42 A. Yes. 43 Q. Would you have a record if CreditSmarts had submitted applications? 44 A. Yes. 45 Q. I'm sorry. Would you have a record if City Select submit the applications. — A. CreditSmarts doesn't submit the applications. — A. They have not. 46 Q. I'm sorry. Would you have a record that City Select submitted applications. — A. They have not. 47 A. There's no setup charge. 48 A. They so of the interaction. 49 A. There's no toning at all in this record from a customer service manager — usually banking related, redil lender related — so that they can add that information without paying, and then that they can add that information in the undernation without paying, and then that they can add that information in the upton through CreditSmarts? 40 A. Correct. Often a dealership will — what we consider poaching. They will poach information add the free related — so that they can add that information in through CreditSmarts' services in any way, is that correct? 41 A. There's a fourth status. I forgot. 42 A. They base a record so, the assumption is a that the relations. That is another				
7 had before that? 8 A. It would have been either — there's no 9 record of it — either free no credit or active. 10 There's a fourth status. I forgot. 11 It's the same thing as inactive. It's a 30-day trial. 12 trial. 13 Q. Okay. Is it possible that CreditSmarts 4 got the 30-day trial and then became inactive? 15 A. That's the most popular form of dealer interaction. 16 interaction. 17 Q. What does the 30-day trial mean? 18 A. They get to use the system for free for 30 days. 20 Q. And the same as a paying member? 21 A. Yes. 22 Q. Now, do you have any records that 23 CreditSmarts did that? 23 CreditSmarts did that? 24 A. No. 25 Q. Would you have a record if CreditSmarts 4 had accessed the system? 25 A. Yes. 26 Q. Would you have a record if CreditSmarts 4 had submitted applications? 26 Q. Vould you have a record if CreditSmarts 4 had submitted applications 5 through CreditSmarts? 26 Q. Im sorry. Im sorry. Would you have a record that City Select submitted applications 5 through CreditSmarts? 27 A. CreditSmarts? 28 Q. And do you have a record that City Select submitted applications 5 through CreditSmarts? 29 Q. And do you have a record that City Select submitted applications 6 Q. Har sorry. Im sorry. Would you have a record that City Select submitted applications 6 Q. Har sorry. Im sorry. Would you have a record that City Select submitted applications 6 Q. Har sorry. Im sorry. Would you have a record that City Select submitted applications 6 Q. Har sorry. Im sorry. Would you have a record that City Select submitted applications 6 Q. Har sorry. Im sorry. Would you have a record that City Select submitted applications 6 Q. Har sorry. Im sorry. Would you have a record that City Select submitted applications 6 Q. Har sorry. Im sorry. Would you have a record that City Select submitted applications 6 Q. Har sorry. Im sorry. Would you have a record that City Select submitted applications 7 Q. Would the setup cost be for when they initially set it up? 20 Q. And do you have a record that City Select 13 Q. More 14 paid, 14	5	A. Yes.	5	
7 had before that? 8 A. It would have been either — there's no 9 record of it — either free no credit or active. 10 There's a fourth status. I forgot. 11 It's the same thing as inactive. It's a 30-day trial. 12 trial. 13 Q. Okay. Is it possible that CreditSmarts 4 got the 30-day trial and then became inactive? 15 A. That's the most popular form of dealer interaction. 16 interaction. 17 Q. What does the 30-day trial mean? 18 A. They get to use the system for free for 30 days. 20 Q. And the same as a paying member? 21 A. Yes. 22 Q. Now, do you have any records that 23 CreditSmarts did that? 23 CreditSmarts did that? 24 A. No. 25 Q. Would you have a record if CreditSmarts 4 had accessed the system? 25 A. Yes. 26 Q. Would you have a record if CreditSmarts 4 had submitted applications? 26 Q. Vould you have a record if CreditSmarts 4 had submitted applications 5 through CreditSmarts? 26 Q. Im sorry. Im sorry. Would you have a record that City Select submitted applications 5 through CreditSmarts? 27 A. CreditSmarts? 28 Q. And do you have a record that City Select submitted applications 5 through CreditSmarts? 29 Q. And do you have a record that City Select submitted applications 6 Q. Har sorry. Im sorry. Would you have a record that City Select submitted applications 6 Q. Har sorry. Im sorry. Would you have a record that City Select submitted applications 6 Q. Har sorry. Im sorry. Would you have a record that City Select submitted applications 6 Q. Har sorry. Im sorry. Would you have a record that City Select submitted applications 6 Q. Har sorry. Im sorry. Would you have a record that City Select submitted applications 6 Q. Har sorry. Im sorry. Would you have a record that City Select submitted applications 6 Q. Har sorry. Im sorry. Would you have a record that City Select submitted applications 6 Q. Har sorry. Im sorry. Would you have a record that City Select submitted applications 7 Q. Would the setup cost be for when they initially set it up? 20 Q. And do you have a record that City Select 13 Q. More 14 paid, 14	6	Q. Okay. And do you know what status they	6	
8 A. It would have been either there's no record of it either free no credit or active. 10 There's a fourth status. I forgot. 11 It's the same thing as inactive. It's a 30-day trial. 12 trial. 13 Q. Okay. Is it possible that CreditSmarts got the 30-day trial and then became inactive? 14 A. That's the most popular form of dealer interaction. 15 A. They get to use the system for free for 30 days. 16 Q. What does the 30-day trial mean? 17 Q. What does the 30-day trial mean? 18 A. They get to use the system for free for 30 days. 19 A. Yes. 20 Q. And the same as a paying member? 21 A. Yes. 22 Q. Now, do you have any records that 23 CreditSmarts did that? 24 A. No. 25 Q. Would you have a record if CreditSmarts 4 had accessed the system? 2 A. No. 2 Q. Would you have a record if CreditSmarts 4 had submitted applications? 4 A. Yes. 6 Q. Do you have any 7 A. CreditSmarts doesn't submit the applications. The dealership does. 9 Q. I'm sorry. I'm sorry. Would you have a record that City Select submitted applications 16 Q through CreditSmarts? 17 So, you've reviewed your records and confired that City Select never submitted a loan application through CreditSmarts? 18 A. Correct. It's a table relationship. 19 A. There's no setup chatabase? 19 A. Na. 20 Q. You don't have any information that they didn't pay for any subscriber status? 21 A. Yes. 22 Q. Would you have a record if CreditSmarts 23 Q. Would you have a record of What payments your subscribers have made? 24 A. Yes. 25 Q. The sorry. I'm sorry. Would you have a record of what payments your subscribers have made? 26 Q. The sorry. I'm sorry. Would you have a record of what payments your subscribers have made? 27 A. Yes. 28 Q. And do you have a record that City Select submitted a polications 29 Q. The sorry. I'm sorry. Would you have a record of that City Select submitted a loan application through CreditSmarts? 29 A. Correct. Often a dealership will what submitted application through CreditSmarts? 29 A. Correct. It's a table relationship. 20 A. A. No	7		7	
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There's a fourth status. I forgot. It's the same thing as inactive. It's a 30-day trial. It's the same thing as inactive. It's a 30-day trial and then became inactive? A. That's the most popular form of dealer interaction. A. That's the most popular form of dealer interaction. A. They get to use the system for free for 30 days. A. They get to use the system for free for 30 days. A. Yes. A. No. CreditSmarts did that? A. No. C. Would you have a record if CreditSmarts A. No. C. Would you have a record if CreditSmarts A. No. C. Would you have a record if CreditSmarts A. No. C. Would you have a record if CreditSmarts A. Ne. A. Ne. C. Ox you don't have a record of that? A. No. C. Would you have a record if CreditSmarts A. Ne. C. Ox you don't have a record of that? A. No. C. Would you have a record if CreditSmarts A. Ne. C. Ox you don't have a record of what payments your subscribers have made? A. They are made? A. They come in aggregate through the emergent services account. If they had paid, I would assume that it would be in that plan setup. A. They are not. A. They have not. A. Yes. A. Correct. It's a table relationship. C. Rate plan? A. That would be if they're paying \$99 per month or once a year. A. Correst. It's a table relationship. A. That would be if they're paying \$99 per month or once a year. A. No. Wash, And you don't have any information that they give of subscriber status? A. No. C. Ox An No. D. Ox Doy you have any records that CreditSmarts doesn't submit the applications? A. No. C. Would you have a record of that? A. I wouldn't. I wouldn't. A. I wouldn't. I wouldn't. A. I wouldn't. I wouldn't. A. They have made? A. They bave mecond in that plan setup. A. There's no setup charge. Q. Would the setup cost be for when they initially set it up? A. There's no setup charge. Q. Would that field get populated when they set up to start paying? A. No. Sety come in aggregate through the emergent services and will in this record that City Select used C. Ox And	9	record of it either free no credit or active.	9	
11 It's the same thing as inactive. It's a 30-day trial. 12 trial. 13 Q. Okay. Is it possible that CreditSmarts got the 30-day trial and then became inactive? 14 got the 30-day trial and then became inactive? 15 A. That's the most popular form of dealer interaction. 16 interaction. 17 Q. What does the 30-day trial mean? 18 A. They get to use the system for free for 30 days. 19 days. 20 Q. And the same as a paying member? 21 A. Yes. 22 Q. Now, do you have any records that 23 CreditSmarts did that? 23 CreditSmarts did that? 24 A. No. 25 Q. Would you have a record if CreditSmarts 26 Q. Would you have a record if CreditSmarts had submitted applications? 27 A. Yes. 28 Q. Do you have any - 29 A. CreditSmarts doesn't submit the applications. The dealership does. 29 Q. I'm sorry. I'm sorry. Would you have a record that City Select aver paid for any type of subscriber shave made? 30 And do you have a record if CreditSmarts applications. The dealership does. 31 Q. Would you have a record of that Papplications are cord if City Select had submitted applications applications. The dealership does. 31 Q. And do you have a record that City Select submitted applications application from a customer service manager - usually banking application from a customer service manager - usually banking related, credit lender related - so that they can application in the information without paying, and then they are cord. A. They have a record. So, the assumption is that City Select had submitted application from a customer service manager - usually banking related, credit lender related - so that they can application the information without paying, and then they are cord. A. They have a record. So, the assumption is that they can be being the daying and then they are cord. So, the assumption is the submitted application is through CreditSmarts? 10 Q. And are plan, CD? 11 A. I wouldn't. I wouldn't. 12 Q. You don't have a record of what payments your subscribers have made? 13 A. They are one in aggregate through the emergent services ac	10	There's a fourth status. I forgot.	10	_
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14	12	trial.	12	
14	13	Q. Okay. Is it possible that CreditSmarts	13	9
15 A. That's the most popular form of dealer interaction. 16 interaction. 17 Q. What does the 30-day trial mean? 18 A. They get to use the system for free for 30 days. 20 Q. And the same as a paying member? 21 A. Yes. 22 Q. Now, do you have any records that City Select was a feed and by the same as a paying member? 23 CreditSmarts did that? 24 A. No. 25 Q. Would you have a record if CreditSmarts 26 A. No. 27 A. No. 28 A. No. 29 A. No. 20 Q. Would you have a record if CreditSmarts 20 A. No. 21 A. No. 22 A. No. 23 CoreditSmarts did that? 24 A. No. 25 Q. Would you have a record if CreditSmarts 26 A. No. 27 A. No. 28 A. No. 29 A. No. 20 Q. Would you have a record of that? 29 A. No. 20 Would you have a record of that? 20 A. That would be if they're paying \$99 per month on once a year. 20 Q. Okay. And you don't have any information that they didn't pay for any subscriber status? 21 A. No. 22 Q. Do you have information that they didn't pay for any subscriber status? 22 A. Ido not. 23 Q. Would you have a record of that? 24 A. No. 25 Q. Would you have a record of that? 26 A. Yes. 27 A. I wouldn't. I wouldn't. 28 Q. You don't have any information that they didn't pay for any subscriber status? 29 A. I do not. 20 Q. Would you have a record of that? 20 A. They come in aggregate through the emergent services account. If they had paid, I would assume that it would be in that plan setup. 29 Q. Would the setup cost be for when they initially set it up? 30 Q. Would that setup cost be for when they initially set it up? 31 Q. And do you have a record that City Select set upon the standard paylications and the first paying? 32 A. There's no setup costs, this is for a Web site. 33 Q. And do you have a record that City Select used CreditSmarts' services in any way; is that correct? 34 A. There's no thing here that shows that they used CreditSmarts' services in any way; is that correct? 35 A. There's no thing here that shows that they used CreditSmarts' services in any way; is that correct?	14		14	A. Correct. It's a table relationship.
17 Q. What does the 30-day trial mean? 18 A. They get to use the system for free for 30 19 days. 20 Q. And the same as a paying member? 21 A. Yes. 22 Q. Now, do you have any records that 23 CreditSmarts did that? 24 A. No. 25 Q. Would you have a record if CreditSmarts 26 A. No. 27 A. No. 28 A. No. 29 A. No. 20 Would you have a record if CreditSmarts 20 A. No. 21 A. No. 22 A. No. 23 CreditSmarts did that? 24 A. No. 25 Q. Would you have a record if CreditSmarts 26 A. No. 27 A. No. 28 A. No. 29 A. No. 20 Would you have a record if CreditSmarts 20 A. No. 21 A. No. 22 A. No. 23 Q. Would you have a record if CreditSmarts 24 A. No. 25 A. No. 26 A. Yes. 27 A. CreditSmarts doesn't submit the 28 applications. The dealership does. 29 Q. I'm sorry. I'm sorry. Would you have a record if City Select had submitted applications 20 A. Yes. 21 A. Yes. 22 Q. Do you have information that they didn't pay for any subscriber status? 24 A. I do not. 25 Q. Would you have a record of that? 26 A. They come in aggregate through the emergent services account. If they had paid, I would assume that it would be in that plan setup. 29 Q. I'm sorry. Would you have a record if City Select had submitted applications 20 Q. Mould the setup cost be for when they initially set it up? 21 A. Yes. 22 Q. Do you have a record of that? 23 pay for any subscriber status? 24 A. I do not. 25 Q. Would you have a record of what payments your subscribers status? 24 A. I do not. 25 Q. You don't have a record of what payments your subscribers status? 25 A. They come in aggregate through the emergent services account. If they had paid, I would assume that it would be in that plan setup. 26 Q. I'm sorry. Would you have a record that City Select and they initially set it up? 28 A. There's no setup charge. 29 Q. I'm sorry. Would you have a record that City Select used CreditSmarts? 29 Q. And do you have a record that City Select used CreditSmarts' services in any way; is that correct? 20 A. Correct. Often a dealership will - what application without paying, and then 29	15	A. That's the most popular form of dealer	15	Q. Rate plan?
A. They get to use the system for free for 30 days. Q. And the same as a paying member? A. Yes. CreditSmarts did that? A. No. Q. Would you have any records that CreditSmarts did that? A. No. Q. Would you have a record if CreditSmarts A. No. Q. Would you have a record if CreditSmarts A. No. Q. Would you have a record of that? A. No. Q. Would you have a record of that? A. No. Q. Would you have a record of that? A. No. Q. Would you have a record of that? A. No. Q. Would you have a record of that? A. I wouldn't. I wouldn't. Q. You don't have a record of that? A. I wouldn't. I wouldn't. Q. You don't have a record of what payments your subscribers have made? A. They come in aggregate through the emergent services account. If they had paid, I would assume that it would be in that plan setup. Q. Would the setup cost be for when they initially set if up? A. Yes. Q. I'm sorry. I'm sorry. Would you have a record if City Select had submitted applications through CreditSmarts? A. Yes. Q. I'm sorry. Would you have a record that City Select submitted applications 15 A. They have not. A. They have not. C. Would that field get populated when they set up to start paying? A. No. Q. Would that field get populated when they set up to start paying? A. No. Q. Mond rate plan, CD? A. Corresponds to the previous column under rate plan. Unique identifier. Q. Okay. And you don't have a record if control that they dodn't that they didn't would n't. A. No. Q. Would you have a record of that? A. I wouldn't. I wouldn't. Q. You don't have a record of that? A. They come in aggregate through the emergent services account. If they had paid, I would assume that it would be in that plan setup. Q. Would that setup cost be for when they initially set it up? A. There's no setup charge. Q. Would that field get populated when they set up to start paying? A. No. Setup costs, this is for a Web site. Q. And rate plan, CD? A. Corresponds to the previous column under rate plan. Unique identifier. Q. Okay.	16	interaction.	16	A. That would be if they're paying \$99 per
19 days. 20 Q. And the same as a paying member? 21 A. Yes. 22 Q. Now, do you have any records that 23 CreditSmarts did that? 24 A. No. 25 Q. Would you have a record if CreditSmarts 26 A. No. 27 Q. Would you have a record if CreditSmarts 28 A. No. 29 A. I do not. 20 Would you have a record of that? 20 A. No. 21 A. I wouldn't. I wouldn't. 22 Q. You don't have a record of that? 23 your subscriber status? 24 A. I do not. 25 Q. Would you have a record of that? 26 A. No. 27 A. No. 28 A. I do not. 29 Q. You don't have a record of what payments your subscribers have made? 4 A. They come in aggregate through the emergent services account. If they had paid, I would assume that it would be in that plan setup. 4 A. They come in aggregate through the emergent services account. If they had paid, I would assume that it would be in that plan setup. 4 A. There's no setup charge. 4 A. No. 4 Yes. 5 Q. Would that field get populated when they initially set it up? 4 A. There's no setup costs, this is for a Web site. 4 Submitted applications - 4 A. Yes. 4 A. No. Setup costs, this is for a Web site. 5 A. They have not. 6 Q. And do you have a record that City Select 7 Q. Would that field get populated when they site. 8 Q. And do you have a record that City Select 9 Q. The payer north. 15 A. They have not. 16 Q. Hortuph CreditSmarts? 17 So, you've reviewed your records and confirmed that City Select never submitted a loan application through CreditSmarts? 18 Q. And rate plan, CD? 19 A. Corresponds to the previous column under rate plan. Unique identifier. 19 Q. Okay. So, there's nothing at all in this record that indicates that City Select used CreditSmarts' services in any way; is that correct? 19 A. There - I do not know. 20 Okay. But there's nothing here that shows that they used CreditSmarts' services? 21 A. They have a record. So, the assumption is	17	Q. What does the 30-day trial mean?	17	month or once a year.
19 days. 20 Q. And the same as a paying member? 21 A. Yes. 22 Q. Now, do you have any records that 23 CreditSmarts did that? 24 A. No. 25 Q. Would you have a record if CreditSmarts 26 A. No. 27 Q. Would you have a record if CreditSmarts 28 A. No. 29 A. I do not. 20 Would you have a record of that? 20 A. No. 21 A. I wouldn't. I wouldn't. 22 Q. You don't have a record of that? 23 your subscriber status? 24 A. I do not. 25 Q. Would you have a record of that? 26 A. No. 27 A. No. 28 A. I do not. 29 Q. You don't have a record of what payments your subscribers have made? 4 A. They come in aggregate through the emergent services account. If they had paid, I would assume that it would be in that plan setup. 4 A. They come in aggregate through the emergent services account. If they had paid, I would assume that it would be in that plan setup. 4 A. There's no setup charge. 4 A. No. 4 Yes. 5 Q. Would that field get populated when they initially set it up? 4 A. There's no setup costs, this is for a Web site. 4 Submitted applications - 4 A. Yes. 4 A. No. Setup costs, this is for a Web site. 5 A. They have not. 6 Q. And do you have a record that City Select 7 Q. Would that field get populated when they site. 8 Q. And do you have a record that City Select 9 Q. The payer north. 15 A. They have not. 16 Q. Hortuph CreditSmarts? 17 So, you've reviewed your records and confirmed that City Select never submitted a loan application through CreditSmarts? 18 Q. And rate plan, CD? 19 A. Corresponds to the previous column under rate plan. Unique identifier. 19 Q. Okay. So, there's nothing at all in this record that indicates that City Select used CreditSmarts' services in any way; is that correct? 19 A. There - I do not know. 20 Okay. But there's nothing here that shows that they used CreditSmarts' services? 21 A. They have a record. So, the assumption is	18	A. They get to use the system for free for 30	18	Q. Okay. And you don't have any information
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9 Q. I'm sorry. Would you have a 10 record if City Select had submitted applications 11 through CreditSmarts? 12 A. Yes. 13 Q. And do you have a record that City Select 14 submitted applications 15 A. They have not. 16 Q through CreditSmarts? 17 So, you've reviewed your records and 18 confirmed that City Select never submitted a loan 19 application through CreditSmarts? 10 Q. Would that field get populated when they 11 set up to start paying? 12 A. No. Setup costs, this is for a Web site. 13 Q. Monthly cost would be 14 \$99 per month. 15 A. They have not. 16 Q through CreditSmarts? 16 A. Corresponds to the previous column under 17 rate plan. Unique identifier. 18 confirmed that City Select never submitted a loan 19 application through CreditSmarts? 19 record that indicates that City Select used 20 A. Correct. Often a dealership will what 21 we consider poaching. They will poach information 22 from a customer service manager usually banking 23 related, credit lender related so that they can 24 obtain the information without paying, and then 24 A. They have a record. So, the assumption is				emergent services account. If they had paid, I would assume that it would be in that plan setup.
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12 A. Yes. 13 Q. And do you have a record that City Select 14 submitted applications 15 A. They have not. 16 Q through CreditSmarts? 17 So, you've reviewed your records and 18 confirmed that City Select never submitted a loan 19 application through CreditSmarts? 19 A. Correct. Often a dealership will what 20 A. Correct. Often a dealership will poach information 21 we consider poaching. They will poach information 22 from a customer service manager usually banking 23 related, credit lender related so that they can 24 obtain the information without paying, and then 20 A. No. Setup costs, this is for a Web site. 20 A. No. Setup costs, this is for a Web site. 20 A. No. Setup costs, this is for a Web site. 21 A. No. Setup costs, this is for a Web site. 20 A. Sp9 per month. 21 A. Corresponds to the previous column under rate plan. Unique identifier. 21 Q. Okay. So, there's nothing at all in this record that indicates that City Select used 22 CreditSmarts' services in any way; is that correct? 23 A. There I do not know. 24 Q. Okay. But there's nothing here that shows that they used CreditSmarts' services? 25 A. They have a record. So, the assumption is	7 8 9	A. CreditSmarts doesn't submit the applications. The dealership does. Q. I'm sorry. I'm sorry. Would you have a	6 7 8	emergent services account. If they had paid, I would assume that it would be in that plan setup. Q. Would the setup cost be for when they initially set it up? A. There's no setup charge.
Q. And do you have a record that City Select submitted applications A. They have not. A. They have not. Co through CreditSmarts? So, you've reviewed your records and confirmed that City Select never submitted a loan application through CreditSmarts? A. Corresponds to the previous column under rate plan. Unique identifier. Q. Okay. So, there's nothing at all in this record that indicates that City Select used CreditSmarts' services in any way; is that correct? A. There I do not know. Cokay. So, there's nothing here that shows related, credit lender related so that they can obtain the information without paying, and then A. They have a record. So, the assumption is	7 8 9 10	A. CreditSmarts doesn't submit the applications. The dealership does. Q. I'm sorry. I'm sorry. Would you have a record if City Select had submitted applications	6 7 8 9 10	emergent services account. If they had paid, I would assume that it would be in that plan setup. Q. Would the setup cost be for when they initially set it up? A. There's no setup charge. Q. Would that field get populated when they
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related, credit lender related so that they can 23 that they used CreditSmarts' services? 24 obtain the information without paying, and then 23 that they used CreditSmarts' services? 24 A. They have a record. So, the assumption is	7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. CreditSmarts doesn't submit the applications. The dealership does. Q. I'm sorry. I'm sorry. Would you have a record if City Select had submitted applications through CreditSmarts? A. Yes. Q. And do you have a record that City Select submitted applications A. They have not. Q through CreditSmarts? So, you've reviewed your records and confirmed that City Select never submitted a loan application through CreditSmarts? A. Correct. Often a dealership will what	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	emergent services account. If they had paid, I would assume that it would be in that plan setup. Q. Would the setup cost be for when they initially set it up? A. There's no setup charge. Q. Would that field get populated when they set up to start paying? A. No. Setup costs, this is for a Web site. Q. Monthly cost would be A. \$99 per month. Q. And rate plan, CD? A. Corresponds to the previous column under rate plan. Unique identifier. Q. Okay. So, there's nothing at all in this record that indicates that City Select used CreditSmarts' services in any way; is that correct?
24 obtain the information without paying, and then 24 A. They have a record. So, the assumption is	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. CreditSmarts doesn't submit the applications. The dealership does. Q. I'm sorry. I'm sorry. Would you have a record if City Select had submitted applications through CreditSmarts? A. Yes. Q. And do you have a record that City Select submitted applications A. They have not. Q through CreditSmarts? So, you've reviewed your records and confirmed that City Select never submitted a loan application through CreditSmarts? A. Correct. Often a dealership will what we consider poaching. They will poach information	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	emergent services account. If they had paid, I would assume that it would be in that plan setup. Q. Would the setup cost be for when they initially set it up? A. There's no setup charge. Q. Would that field get populated when they set up to start paying? A. No. Setup costs, this is for a Web site. Q. Monthly cost would be A. \$99 per month. Q. And rate plan, CD? A. Corresponds to the previous column under rate plan. Unique identifier. Q. Okay. So, there's nothing at all in this record that indicates that City Select used CreditSmarts' services in any way; is that correct? A. There I do not know.
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that they have engaged at some point in time.	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. CreditSmarts doesn't submit the applications. The dealership does. Q. I'm sorry. I'm sorry. Would you have a record if City Select had submitted applications through CreditSmarts? A. Yes. Q. And do you have a record that City Select submitted applications A. They have not. Q through CreditSmarts? So, you've reviewed your records and confirmed that City Select never submitted a loan application through CreditSmarts? A. Correct. Often a dealership will what we consider poaching. They will poach information from a customer service manager usually banking related, credit lender related so that they can	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	emergent services account. If they had paid, I would assume that it would be in that plan setup. Q. Would the setup cost be for when they initially set it up? A. There's no setup charge. Q. Would that field get populated when they set up to start paying? A. No. Setup costs, this is for a Web site. Q. Monthly cost would be A. \$99 per month. Q. And rate plan, CD? A. Corresponds to the previous column under rate plan. Unique identifier. Q. Okay. So, there's nothing at all in this record that indicates that City Select used CreditSmarts' services in any way; is that correct? A. There I do not know. Q. Okay. But there's nothing here that shows that they used CreditSmarts' services?
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	177		179
1	Twice.	1	A. No.
2	Q. It's possible that all they did was agree	2	Q. And because you're a paperless company,
3	to receive some information from CreditSmarts?	3	there's no physical records that would reflect notes
4	A. It's possible. It's also possible they	4	of those conversations?
5	had the intent to gain information without using it.	5	A. No.
6	Q. Okay. And there's nothing in here that	6	MR. PIPER: Why don't we mark that as the
7	specifically indicates what sort of information	7	next exhibit?
8	CreditSmarts was expecting to receive I'm sorry.	8	(Deposition Exhibit 24 was marked.)
9	There's nothing in here that specifically identifies	9	Q. (BY MR. PIPER) Okay. Do you recognize
10	what kind of information City Select asked to	10	this exhibit?
11	receive	11	A. Yes.
12	A. No.	12	Q. And what's this?
13	Q is that correct?	13	A. That is the AutoWebExperts Web site.
14	If your lawyer wasn't so tired, he'd	14	Q. Now, what's the difference between
15	be telling you to wait until I finish	15	AutoWebExperts and CreditSmarts?
16	A. Sorry.	16	A. AutoWebExperts is a Web site-hosting
17	Q my questions, and I'm sorry I take so	17	software that I built because a lot of auto
18	long to ask them.	18	dealerships had substandard Web site presence; and
19	A. I apologize. I'm a little tired.	19	being an independent auto dealership, a lot of
20	Q. But there's nothing here that says that	20	people in the industry view them as being
21	City Select specifically said they wanted to receive	21	substandard.
22	a particular type of information?	22	Q. AutoWebExperts is not a separate company;
23	A. No.	23	is that correct?
24	Q. And there's nothing here that says exactly	24	A. No.
25	what they were told about what kind of information	25	Q. So, it's a name for a particular service
	178		180
1	they might receive?	1	that CreditSmarts provides?
2	they might receive? A. No.	2	that CreditSmarts provides? A. Correct.
	they might receive? A. No. Q. And although there's a call script that	2 3	that CreditSmarts provides? A. Correct. Q. And does this Web site give an accurate
2	they might receive? A. No. Q. And although there's a call script that you produced, there's a lot of information on this	2	that CreditSmarts provides? A. Correct. Q. And does this Web site give an accurate summary of the services that AutoWebExperts
2	they might receive? A. No. Q. And although there's a call script that	2 3	that CreditSmarts provides? A. Correct. Q. And does this Web site give an accurate summary of the services that AutoWebExperts provides?
2 3 4	they might receive? A. No. Q. And although there's a call script that you produced, there's a lot of information on this field that goes beyond what's on the call script, right?	2 3 4 5 6	that CreditSmarts provides? A. Correct. Q. And does this Web site give an accurate summary of the services that AutoWebExperts provides? A. Yes.
2 3 4 5 6 7	they might receive? A. No. Q. And although there's a call script that you produced, there's a lot of information on this field that goes beyond what's on the call script, right? A. The call script is for first contact.	2 3 4 5	that CreditSmarts provides? A. Correct. Q. And does this Web site give an accurate summary of the services that AutoWebExperts provides? A. Yes. Q. And there's a separate Web site for
2 3 4 5 6 7 8	they might receive? A. No. Q. And although there's a call script that you produced, there's a lot of information on this field that goes beyond what's on the call script, right? A. The call script is for first contact. Q. Okay. So, the specifics of whatever	2 3 4 5 6	that CreditSmarts provides? A. Correct. Q. And does this Web site give an accurate summary of the services that AutoWebExperts provides? A. Yes. Q. And there's a separate Web site for AutoWebExperts; is that correct?
2 3 4 5 6 7 8	they might receive? A. No. Q. And although there's a call script that you produced, there's a lot of information on this field that goes beyond what's on the call script, right? A. The call script is for first contact. Q. Okay. So, the specifics of whatever discussion somebody had with City Select from	2 3 4 5 6 7	that CreditSmarts provides? A. Correct. Q. And does this Web site give an accurate summary of the services that AutoWebExperts provides? A. Yes. Q. And there's a separate Web site for AutoWebExperts; is that correct? A. Yes. It's AutoWebExperts.com.
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	181		183
1	(Deposition Exhibit 26 was marked.)	1	everything that you access once you log in to this,
2	Q. (BY MR. PIPER) Okay. Do you recognize	2	is that maintained at Codero?
3	this document?	3	A. Yes.
4	A. Yes.	4	Q. And what aspects of what do you call
5	Q. What is this?	5	the world that you can access through this login?
6	A. A login page for CreditSmarts.com.	6	Is that something you call CreditSmarts.com?
7	Q. Is this the same login page it says	7	A. Yes.
8	"Realm: Dealer." So, presumably this is a login	8	Q. What aspects at CreditSmarts.com are there
9	page that a dealer that had access to the Web site	9	that the administrator can access that other people
10	could use; is that correct?	10	wouldn't be able to access?
11	A. Yes.	11	A. It depends on what level the administrator
12	Q. What are the other realm fields other than	12	is.
13	dealers? Who else can access the Web site through	13	Q. Well, at the highest level, what sort of
14	this login?	14	things do you maintain there that others wouldn't?
15	A. Administrator.	15	And I don't want details. I'm just trying to get a
16	Q. Anybody else?	16	general sense of what's out there.
17	A. Lender.	17	A. The welcome page. There's a splash page
18	Q. Okay. Anybody else?	18	once they login to here that is a daily welcome
19	A. Lender branch.	19	page, gives them information such as what's going on
20	Q. Anybody else?	20	in the world. There's a news reel. I post a daily
21	A. Lender affiliate.	21	quote of the day.
22	Q. Anybody else?	22	Q. And is that something that's for everybody
23	A. That should be it.	23	or just for administrators?
24	Q. Okay. So, a typical employee of	24	A. It's who can change that?
25	CreditSmarts, would they be able to login through	25	Q. No. I mean, who the welcome page is
		25	
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25	CreditSmarts, would they be able to login through		Q. No. I mean, who the welcome page is
25	CreditSmarts, would they be able to login through 182 this?	1	Q. No. I mean, who the welcome page is 184 something that anybody that can log in
25 1 2	CreditSmarts, would they be able to login through 182 this? A. Yes.	1 2 3 4	Q. No. I mean, who the welcome page is 184 something that anybody that can log in A. Only for auto dealerships and lenders.
1 2 3 4 5	CreditSmarts, would they be able to login through 182 this? A. Yes. Q. And would they do that as an administrator? A. Yes.	1 2 3 4 5	Q. No. I mean, who the welcome page is 184 something that anybody that can log in A. Only for auto dealerships and lenders. Q would be able to view? A. Administrators don't see that page. Q. Other than the welcome page, what other
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1 2 3 4 4 5 6 6 7 8 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	this? A. Yes. Q. And would they do that as an administrator? A. Yes. Q. Okay. And if you are a dealer, what level do you have to be able what level do you need to be to be able to login through this login page? A. Free no credit, 30-day trial, or active. Q. Okay. Do you have any record of logins that are successfully made through this page? A. Yes. Q. Have you checked those records to see if City Select ever logged in to CreditSmarts.com? A. Those records are kept roughly 30 to 60 days. Q. Did you check at the time that did you ever check to see whether City Select had logged in? A. No. Q. Because they had been inactive for more than 30 or 60 days A. Correct.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. No. I mean, who the welcome page is 184 something that anybody that can log in A. Only for auto dealerships and lenders. Q would be able to view? A. Administrators don't see that page. Q. Other than the welcome page, what other aspects of CreditSmarts.com are there? A. There's a lender page which reviews and identifies different lenders and their program requirements. Q. Okay. So, would that would that have sublinks? For example, the instructions about the Up2Drive check, would that be something that you would access through the lender page? A. Yes. Q. Okay. Are all the lenders listed on one page on the lender page? A. Yes. Q. And is that something that any dealer would have access to? A. No. Q. Who would have access to the lender page? A. In this context this lender page is to

	185		187
1	the auto dealership.	1	Q. Would so, to get the information that
2	Q. Okay. So, other than the welcome page and	2	Up2Drive was part of the CreditSmarts network, you
3	the lender page for administrators to update, what	3	would not have to actually place an application.
4	other aspects of CreditSmarts.com	4	You could access that through the lender page; is
5	A. They have the same option to do so for an	5	that correct?
6	auto dealership which would be to identify the auto	6	A. Correct.
7	dealer, provide them a user name and pass code.	7	Q. How about the instructions about the
8	Q. So, who would have access to the auto	8	check? Is that something you can link to through
9	dealer page?	9	the lender page?
10	A. Any customer service manager.	10	A. Yes.
11	Q. Okay. And what other besides the	11	Q. Okay. I thought you testified earlier
12	welcome page, lender page, and auto page, what other	12	that you could only get that if you placed an
13	realms are there? Or I'm sorry. Realm is a	13	application; but if I understood that, that was a
14	specific term. What other aspects of	14	misunderstanding on my part or
15	CreditSmarts.com are there?	15	A. Semantics. No one ever uses the lender
16	A. There's a search and report function that	16	page. They hit submit.
17	allows you to search up to 30 days.	17	Q. Now, what is the page for doing that
18	Q. And what kinds of things can you search	18	submission?
19	for?	19	A. Submit.
20	A. Loan numbers, auto dealerships.	20	Q. It's a submit page?
21	MR. GARCIA: I'll object to this entire	21	A. (Nods head.)
22	line of questioning.	22	Q. And that's the page you use if you want to
23	MR. PIPER: Because it's boring?	23	submit an application for a loan?
24	MR. GARCIA: It's irrelevant.	24	A. Correct.
25	MR. HAYES: Jon, you've drifted off for	25	Q. And that page is lender neutral. It's
	186		188
1	186	1	188
1	about 30, 45 minutes here it seems to me; but go	1	simply you're putting in contact and financial
2	about 30, 45 minutes here it seems to me; but go right ahead.	2	simply you're putting in contact and financial and car data for a particular customer?
2	about 30, 45 minutes here it seems to me; but go right ahead. Q. (BY MR. PIPER) And what else?	2 3	simply you're putting in contact and financial and car data for a particular customer? A. Correct. It cycles through and identifies
2 3 4	about 30, 45 minutes here it seems to me; but go right ahead. Q. (BY MR. PIPER) And what else? A. There's a compliance contract package page	2 3 4	simply you're putting in contact and financial and car data for a particular customer? A. Correct. It cycles through and identifies the lenders that are available to the auto
2 3 4 5	about 30, 45 minutes here it seems to me; but go right ahead. Q. (BY MR. PIPER) And what else? A. There's a compliance contract package page to identify the loan documents that are being	2 3 4 5	simply you're putting in contact and financial and car data for a particular customer? A. Correct. It cycles through and identifies the lenders that are available to the auto dealership.
2 3 4 5 6	about 30, 45 minutes here it seems to me; but go right ahead. Q. (BY MR. PIPER) And what else? A. There's a compliance contract package page to identify the loan documents that are being utilized and sold.	2 3 4 5 6	simply you're putting in contact and financial and car data for a particular customer? A. Correct. It cycles through and identifies the lenders that are available to the auto dealership. Q. But it does that internally. It's not
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	189		191
1	A. I would have a significant issue. It	1	CreditSmarts/Up2Drive relationship, did all this
2	would be a violation of their contract with	2	computer screen system was there a test module of
3	Experion.	3	this whole interface that BMW saw to know that there
4	Q. So, while some of this stuff may talk	4	was a lender page that made reference to them and so
5	about the buyer of the car applying for credit, it's	5	forth?
6	always going to be, as far as you're concerned, the	6	A. No.
7	car dealer that's	7	Q. Did they know that there was a lender page
8	A. Correct.	8	that made reference to them?
9	Q inputting the information?	9	A. Yes.
10	A. On this login page you'll see there's a	10	Q. How did they know that if it wasn't
11	2500-dollar fine per incident.	11	through a testing of the Internet site?
12	Q. It even says that on the login page that	12	A. It's implied.
13	you can't turn this over to the customer. Okay.	13	Q. How is that implied? Because anybody that
14	So, is the first thing that the	14	looked at the CreditSmarts.com would see that it's
15	dealer does is input all the loan application	15	there?
16	A. Correct.	16	A. In order for an auto dealership to be able
17	Q. And that does not specify what lender, or	17	the identify which phone number to call to cash that
18	do they have to specify lenders before they push the	18	check, they would have to have a lender page.
19	submit button?	19	Q. Okay. So, somewhere there would have to
20	A. No.	20	be something saying if you want this loan, here's
21	Q. They can't specify a lender before they	21	how to go about finalizing
22	push submit?	22	A. Otherwise, they get a grade approval; but
23	A. Correct.	23	who do they call?
24	Q. But once they push submit, do they then	24	Q. Yeah. No money gets changes hands.
25	get options from various lenders in response?	25	Okay.
1	190 A. Yes.	1	192
2	71. 100.	_	
	 Q. And that's the cycling through. And if 	2	How did you start to get involved with Up2Drive?
	Q. And that's the cycling through. And if you met all the criteria for Up2Drive. Up2Drive	2 3	with Up2Drive?
3 4	you met all the criteria for Up2Drive, Up2Drive	2 3 4	with Up2Drive? A. Salesperson.
3 4	you met all the criteria for Up2Drive, Up2Drive would pop up as one of the options that's interested	3	with Up2Drive?
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	193		195
1	A. (Nods head.)	1	Q. Okay. And you would have done that about
2	THE COURT REPORTER: Was that a yes?	2	the time that there was active interest expressed at
3	THE WITNESS: Yes.	3	BMW?
4	Q. (BY MR. PIPER) I'm just going to mark this	4	A. Yes.
5	and discuss it briefly hopefully.	5	Q. Okay. Now, there was a guy named or girl
6	(Deposition Exhibit 27 was marked.)	6	named Ruzzet Anafiev at CreditSmarts who had some
7	Q. (BY MR. PIPER) Do you recognize this	7	involvement in the discussions with Up2Drive; is
8	document?	8	that correct?
9	A. Yes.	9	A. Yes.
10	Q. And is this essentially a different	10	Q. Was that a man or a woman?
11	interface for accessing the same customer data that	11	A. It's a man.
12	we talked about with the earlier Exhibit No. 23?	12	Q. And what was Ruzzet's role in the
13	A. This is a merge of two documents.	13	negotiations?
14	Q. Okay.	14	A. He is a developer Web developer.
15	A. The top portion is the user screen from an	15	Q. Okay. So, would Ruzzet's primary
16	administrator's perspective, and the bottom is the	16	responsibility have been to deal with the
17	same snapshot we've reviewed on a previous document.	17	integration of Up2Drive into the CreditSmarts
18	Q. And how does the user screen work?	18	interface?
19	A. You can see there is a main screen.	19	A. Correct. Into testing.
20	There's licensing, flooring, security, credit. This	20	Q. How about Erik at CreditSmarts with a K,
21	is where the customer service manager would enter	21	E-r-i-k? Was there a CreditSmarts employee named
22	the appropriate information.	22	Erik with a K?
23	Q. Okay. So, this is a screen shot of the	23	A. Yes. He's a contract developer.
24	field by which a person could edit or input	24	Q. So, is he also Internet or, rather, Web
25	initially the information that then shows up in the	25	design-type involvement?
	,		doolgii typo iiivoivoiiioiit.
	194		196
1	194	1	196
			196 A. Yes. Erik would handle anything that is
1	database that was reflected in 23? A. Correct.	1	196
1 2	194 database that was reflected in 23?	1 2	A. Yes. Erik would handle anything that is live, and Ruzzet would do anything that is up to
1 2 3	database that was reflected in 23? A. Correct. Q. Okay. Do you have to be sponsored by a	1 2 3	A. Yes. Erik would handle anything that is live, and Ruzzet would do anything that is up to testing. Q. Okay. What was the role of Alex Alex
1 2 3 4	database that was reflected in 23? A. Correct. Q. Okay. Do you have to be sponsored by a lender to be a free subscriber? A. No.	1 2 3 4	A. Yes. Erik would handle anything that is live, and Ruzzet would do anything that is up to testing.
1 2 3 4 5	database that was reflected in 23? A. Correct. Q. Okay. Do you have to be sponsored by a lender to be a free subscriber? A. No. Q. Okay. Are most free subscribers sponsored	1 2 3 4 5	A. Yes. Erik would handle anything that is live, and Ruzzet would do anything that is up to testing. Q. Okay. What was the role of Alex Alex Gomez was involved in some of the start-up process
1 2 3 4 5	database that was reflected in 23? A. Correct. Q. Okay. Do you have to be sponsored by a lender to be a free subscriber? A. No. Q. Okay. Are most free subscribers sponsored by a lender?	1 2 3 4 5	A. Yes. Erik would handle anything that is live, and Ruzzet would do anything that is up to testing. Q. Okay. What was the role of Alex Alex Gomez was involved in some of the start-up process for Up2Drive, correct? A. He might have been copied on some e-mails
1 2 3 4 5 6	database that was reflected in 23? A. Correct. Q. Okay. Do you have to be sponsored by a lender to be a free subscriber? A. No. Q. Okay. Are most free subscribers sponsored by a lender? A. Yes.	1 2 3 4 5 6	A. Yes. Erik would handle anything that is live, and Ruzzet would do anything that is up to testing. Q. Okay. What was the role of Alex Alex Gomez was involved in some of the start-up process for Up2Drive, correct?
1 2 3 4 5 6 7 8	database that was reflected in 23? A. Correct. Q. Okay. Do you have to be sponsored by a lender to be a free subscriber? A. No. Q. Okay. Are most free subscribers sponsored by a lender? A. Yes. Q. Given that City Select was not sponsored	1 2 3 4 5 6 7 8	A. Yes. Erik would handle anything that is live, and Ruzzet would do anything that is up to testing. Q. Okay. What was the role of Alex Alex Gomez was involved in some of the start-up process for Up2Drive, correct? A. He might have been copied on some e-mails or put a test application in.
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1 2 3 4 5 6 7 8 9	database that was reflected in 23? A. Correct. Q. Okay. Do you have to be sponsored by a lender to be a free subscriber? A. No. Q. Okay. Are most free subscribers sponsored by a lender? A. Yes. Q. Given that City Select was not sponsored by a lender according to the affiliate field, would it be your understanding that most likely they at	1 2 3 4 5 6 7 8 9	A. Yes. Erik would handle anything that is live, and Ruzzet would do anything that is up to testing. Q. Okay. What was the role of Alex Alex Gomez was involved in some of the start-up process for Up2Drive, correct? A. He might have been copied on some e-mails or put a test application in. Q. What would his role have been at that
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	database that was reflected in 23? A. Correct. Q. Okay. Do you have to be sponsored by a lender to be a free subscriber? A. No. Q. Okay. Are most free subscribers sponsored by a lender? A. Yes. Q. Given that City Select was not sponsored by a lender according to the affiliate field, would it be your understanding that most likely they at some point signed up for the 30-day free membership and then went inactive after 30 days? A. Most likely. It's subject to human error. Q. But based on your experience, that would be the most likely scenario? A. (Nods head.) Q. So, what were Chad's responsibilities with respect to setting up the relationship with	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. Yes. Erik would handle anything that is live, and Ruzzet would do anything that is up to testing. Q. Okay. What was the role of Alex Alex Gomez was involved in some of the start-up process for Up2Drive, correct? A. He might have been copied on some e-mails or put a test application in. Q. What would his role have been at that point in the setup? A. I don't recall. It would have been limited. Q. Okay. Did he do anything that was inappropriate in terms of his communications with Up2Drive that led you to tell him that he shouldn't be communicating with Up2Drive? A. No. Q. How about C. Simmons at CreditSmarts? Who is that?
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	database that was reflected in 23? A. Correct. Q. Okay. Do you have to be sponsored by a lender to be a free subscriber? A. No. Q. Okay. Are most free subscribers sponsored by a lender? A. Yes. Q. Given that City Select was not sponsored by a lender according to the affiliate field, would it be your understanding that most likely they at some point signed up for the 30-day free membership and then went inactive after 30 days? A. Most likely. It's subject to human error. Q. But based on your experience, that would be the most likely scenario? A. (Nods head.) Q. So, what were Chad's responsibilities with respect to setting up the relationship with Up2Drive?	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. Yes. Erik would handle anything that is live, and Ruzzet would do anything that is up to testing. Q. Okay. What was the role of Alex Alex Gomez was involved in some of the start-up process for Up2Drive, correct? A. He might have been copied on some e-mails or put a test application in. Q. What would his role have been at that point in the setup? A. I don't recall. It would have been limited. Q. Okay. Did he do anything that was inappropriate in terms of his communications with Up2Drive that led you to tell him that he shouldn't be communicating with Up2Drive? A. No. Q. How about C. Simmons at CreditSmarts? Who is that? A. He is a salesman.
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	database that was reflected in 23? A. Correct. Q. Okay. Do you have to be sponsored by a lender to be a free subscriber? A. No. Q. Okay. Are most free subscribers sponsored by a lender? A. Yes. Q. Given that City Select was not sponsored by a lender according to the affiliate field, would it be your understanding that most likely they at some point signed up for the 30-day free membership and then went inactive after 30 days? A. Most likely. It's subject to human error. Q. But based on your experience, that would be the most likely scenario? A. (Nods head.) Q. So, what were Chad's responsibilities with respect to setting up the relationship with Up2Drive? A. Sales.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. Yes. Erik would handle anything that is live, and Ruzzet would do anything that is up to testing. Q. Okay. What was the role of Alex Alex Gomez was involved in some of the start-up process for Up2Drive, correct? A. He might have been copied on some e-mails or put a test application in. Q. What would his role have been at that point in the setup? A. I don't recall. It would have been limited. Q. Okay. Did he do anything that was inappropriate in terms of his communications with Up2Drive that led you to tell him that he shouldn't be communicating with Up2Drive? A. No. Q. How about C. Simmons at CreditSmarts? Who is that? A. He is a salesman. Q. That's Chad, right?
1 2 3 4 5 6 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	database that was reflected in 23? A. Correct. Q. Okay. Do you have to be sponsored by a lender to be a free subscriber? A. No. Q. Okay. Are most free subscribers sponsored by a lender? A. Yes. Q. Given that City Select was not sponsored by a lender according to the affiliate field, would it be your understanding that most likely they at some point signed up for the 30-day free membership and then went inactive after 30 days? A. Most likely. It's subject to human error. Q. But based on your experience, that would be the most likely scenario? A. (Nods head.) Q. So, what were Chad's responsibilities with respect to setting up the relationship with Up2Drive? A. Sales. Q. Okay. So, he kind of landed the deal; and	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Yes. Erik would handle anything that is live, and Ruzzet would do anything that is up to testing. Q. Okay. What was the role of Alex Alex Gomez was involved in some of the start-up process for Up2Drive, correct? A. He might have been copied on some e-mails or put a test application in. Q. What would his role have been at that point in the setup? A. I don't recall. It would have been limited. Q. Okay. Did he do anything that was inappropriate in terms of his communications with Up2Drive that led you to tell him that he shouldn't be communicating with Up2Drive? A. No. Q. How about C. Simmons at CreditSmarts? Who is that? A. He is a salesman. Q. That's Chad, right? A. Yes.

	197		199
1	Up2Drive?	1	such discussions at all?
2	A. I don't work for Up2Drive.	2	A. I don't recall.
3	MR. GARCIA: Objection.	3	Q. Okay. Have is anybody other than
4	Q. (BY MR. PIPER) Did you have an	4	CreditSmarts paying any portion of your legal fees
5	understanding of where he fit in or	5	and expenses in connection with this lawsuit?
6	A. He is my contact.	6	A. No. You're welcome to.
7	Q. Okay. And do you know what his job is	7	Q. Okay. But you don't have any agreement
8	other than that?	8	A. It's been quite substantial.
9	A. I do not know.	9	Q. But you don't have any agreement with
10	Q. Okay. Did you know someone named Jamie	10	WestFax where they're subsidizing any portion?
11	Peters at Up2Drive?	11	A. No.
12	A. He's a Web developer.	12	Q. Okay. Are you getting Mr. Hayes' services
13	Q. Okay.	13	at any discount because of his relationship with
14	MR. PIPER: And if you want to help me	14	WestFax?
15	out, what's the name of the other Pawan. What's	15	A. No.
16	the last name of that witness?	16	Q. And you submitted a claim to Hartford,
17	MR. GARCIA: Pawan Murphy.	17	your insurance company; and they denied coverage,
18	Q. (BY MR. PIPER) Did you deal with someone	18	correct?
19	named Pawan Murphy, P-a-w-a-n Murphy?	19	A. I did.
20	A. I don't recall.	20	Q. Have you reviewed your contracts with
21	Q. Okay. That name doesn't ring a bell?	21	Up2Drive since this lawsuit started?
22	A. No.	22	A. No.
23	Q. To your recollection, is Jake Thompson the	23	Q. Okay. Do you know what your contracts say
24	only person that you had substantive discussions	24	about marketing or advertising?
25	with about the business relationship between	25	A. I do not know.
	198		000
			200
1	CreditSmarts and Up2Drive?	1	Q. Okay. You have stated in an affidavit you
1 2	CreditSmarts and Up2Drive? A. Yes.	1 2	
	•		Q. Okay. You have stated in an affidavit you
2	A. Yes.	2	Q. Okay. You have stated in an affidavit you prepared that Mr. Gomez well, you prepared an
2 3 4	A. Yes. Q. Do you recall anything sitting here about	2	Q. Okay. You have stated in an affidavit you prepared that Mr. Gomez well, you prepared an affidavit in which you said the one fax was created
2 3 4	A. Yes. Q. Do you recall anything sitting here about the process of negotiating the written agreements	2 3 4	Q. Okay. You have stated in an affidavit you prepared that Mr. Gomez well, you prepared an affidavit in which you said the one fax was created and sent inadvertently by an employee of
2 3 4 5	A. Yes. Q. Do you recall anything sitting here about the process of negotiating the written agreements between CreditSmarts and Up2Drive?	2 3 4 5	Q. Okay. You have stated in an affidavit you prepared that Mr. Gomez well, you prepared an affidavit in which you said the one fax was created and sent inadvertently by an employee of CreditSmarts on December 27th, 2012; and you don't
2 3 4 5 6 7	A. Yes. Q. Do you recall anything sitting here about the process of negotiating the written agreements between CreditSmarts and Up2Drive? A. No.	2 3 4 5 6	Q. Okay. You have stated in an affidavit you prepared that Mr. Gomez well, you prepared an affidavit in which you said the one fax was created and sent inadvertently by an employee of CreditSmarts on December 27th, 2012; and you don't mean to say that Mr. Gomez slipped and pushed the
2 3 4 5 6 7	A. Yes. Q. Do you recall anything sitting here about the process of negotiating the written agreements between CreditSmarts and Up2Drive? A. No. Q. Okay. Do you remember that there was a	2 3 4 5 6 7	Q. Okay. You have stated in an affidavit you prepared that Mr. Gomez well, you prepared an affidavit in which you said the one fax was created and sent inadvertently by an employee of CreditSmarts on December 27th, 2012; and you don't mean to say that Mr. Gomez slipped and pushed the send button on the computer by accident. You mean
2 3 4 5 6 7 8	A. Yes. Q. Do you recall anything sitting here about the process of negotiating the written agreements between CreditSmarts and Up2Drive? A. No. Q. Okay. Do you remember that there was a confidentiality agreement early in the process?	2 3 4 5 6 7 8	Q. Okay. You have stated in an affidavit you prepared that Mr. Gomez well, you prepared an affidavit in which you said the one fax was created and sent inadvertently by an employee of CreditSmarts on December 27th, 2012; and you don't mean to say that Mr. Gomez slipped and pushed the send button on the computer by accident. You mean that you didn't know he was doing it?
2 3 4 5 6 7 8 9	A. Yes. Q. Do you recall anything sitting here about the process of negotiating the written agreements between CreditSmarts and Up2Drive? A. No. Q. Okay. Do you remember that there was a confidentiality agreement early in the process? A. I don't recall those.	2 3 4 5 6 7 8	Q. Okay. You have stated in an affidavit you prepared that Mr. Gomez well, you prepared an affidavit in which you said the one fax was created and sent inadvertently by an employee of CreditSmarts on December 27th, 2012; and you don't mean to say that Mr. Gomez slipped and pushed the send button on the computer by accident. You mean that you didn't know he was doing it? A. Correct.
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2 3 4 5 6 7 8 9 10	A. Yes. Q. Do you recall anything sitting here about the process of negotiating the written agreements between CreditSmarts and Up2Drive? A. No. Q. Okay. Do you remember that there was a confidentiality agreement early in the process? A. I don't recall those. Q. Okay. Do you recall at some point that CreditSmarts sent its version of a vendor agreement	2 3 4 5 6 7 8 9 10	Q. Okay. You have stated in an affidavit you prepared that Mr. Gomez well, you prepared an affidavit in which you said the one fax was created and sent inadvertently by an employee of CreditSmarts on December 27th, 2012; and you don't mean to say that Mr. Gomez slipped and pushed the send button on the computer by accident. You mean that you didn't know he was doing it? A. Correct. Q. Is that what you mean by inadvertent? A. Correct.
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2 3 4 5 6 7 8 9 10 11 12 13 14	A. Yes. Q. Do you recall anything sitting here about the process of negotiating the written agreements between CreditSmarts and Up2Drive? A. No. Q. Okay. Do you remember that there was a confidentiality agreement early in the process? A. I don't recall those. Q. Okay. Do you recall at some point that CreditSmarts sent its version of a vendor agreement to Up2Drive for execution? A. That would be standard.	2 3 4 5 6 7 8 9 10 11 12	Q. Okay. You have stated in an affidavit you prepared that Mr. Gomez well, you prepared an affidavit in which you said the one fax was created and sent inadvertently by an employee of CreditSmarts on December 27th, 2012; and you don't mean to say that Mr. Gomez slipped and pushed the send button on the computer by accident. You mean that you didn't know he was doing it? A. Correct. Q. Is that what you mean by inadvertent? A. Correct. Q. Inadvertent means without your prior knowledge?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Yes. Q. Do you recall anything sitting here about the process of negotiating the written agreements between CreditSmarts and Up2Drive? A. No. Q. Okay. Do you remember that there was a confidentiality agreement early in the process? A. I don't recall those. Q. Okay. Do you recall at some point that CreditSmarts sent its version of a vendor agreement to Up2Drive for execution? A. That would be standard. Q. Okay. And do you recall what their reaction was to that? A. I believe to replace it with theirs. Q. Okay. Did do you recall if they gave you any specifics about why they wanted to replace it? A. No. They're in charge. Q. Okay. Do you recall ever having any specific discussions with Up2Drive about any	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. Okay. You have stated in an affidavit you prepared that Mr. Gomez well, you prepared an affidavit in which you said the one fax was created and sent inadvertently by an employee of CreditSmarts on December 27th, 2012; and you don't mean to say that Mr. Gomez slipped and pushed the send button on the computer by accident. You mean that you didn't know he was doing it? A. Correct. Q. Is that what you mean by inadvertent? A. Correct. Q. Inadvertent means without your prior knowledge? A. And against policy. Q. And was that policy in writing anywhere? A. No. Q. Do you know when was the last time you would have expressed that policy to Mr. Gomez? A. I don't recall. Q. And what was the policy? Was it specific to was it just a BMW-only policy? A. No.

		1	
	201		203
1	is going to put out program guidelines, that they be	1	Q. And what are their XML criteria? I don't
2	specific to a small market. I only have four to	2	mean specifically what their what are XML
3	five customer service managers. It's my opinion	3	criteria?
4	that every auto dealership that has any type of	4	A. Data integration.
5	communication with CreditSmarts must be contacted by	5	Q. So, that was basically specifications for
6	phone. You can't do that if it's a larger	6	how they would receive information from you so that
7	distribution on a program update.	7	it would work with their system?
8	Q. Okay. So, what was against policy was	8	A. Yes.
9	that he sent it to 10,000 faxes at once?	9	Q. So, other than the Up2Drive logo, the
10	A. Correct. And that it was Up2Drive and	10	drive check image, and the XML data integration
11	that it didn't have CreditSmarts' name on it.	11	requirements, can you think of any other proprietary
12	Q. Did you have had you told people that	12	information that Up2Drive gave you?
13	all your faxes have to have CreditSmarts' name on	13	A. No.
14	it?	14	Q. Other than the fact that there's a fax
15	A. No.	15	number in the data entry for City Select, do you
16	Q. Had you other than the one	16	have any record that City Select ever consented to
17	conversation, had you told Mr. Gomez that he	17	receive faxes from CreditSmarts?
18	shouldn't send marketing for CreditSmarts?	18	 There are two data entries.
19	A. You mean for Up2Drive?	19	Q. Well, there are two dates, right?
20	Q. Yeah. Other than the one conversation in	20	A. Correct.
21	June, 2012, had you ever expressed a policy to	21	Q. But other than those two dates, is there
22	Mr. Gomez that he should not send Up2Drive	22	anything in your records that reflects that they
23	marketing?	23	specifically consented to receive fax messages from
24	A. I don't recall.	24	CreditSmarts?
25	Q. And had you ever expressed to him a	25	A. No.
	202		204
1		1	
1	general policy about limiting the number of faxes	1	Q. And those dates simply reflect that an
2 3	that you sent? A. Yes.	2 3	entry was created and modified. They do not
4	Q. Did you tell him what the number was that	4	specifically state that City Select agreed to receive faxes on either of those dates?
5	you thought was acceptable?	5	A. There would be no purpose otherwise.
6	A. No.	6	Q. You have no way to communicate with
7	Q. What do you think the number is that's	7	dealers other than by fax?
8	acceptable for your purpose of follow-up calls?	8	A. No. There would be no purpose for them to
9	A. I at this point wouldn't wouldn't be	9	be in the CreditSmarts system if they hadn't agreed
10	able to determine that.	10	to receive information or a demonstration.
11	Q. Did you ever have a specific number in	11	Q. Right. But there's ways to receive you
12	mind?	12	also sent e-mails to dealers; is that correct?
13	A. No.	13	A. We contact them by phone.
14	Q. Okay. But your understanding is he didn't	14	Q. And you make phone calls?
15	target this fax to a particular geographical target?	15	A. That's the most effective way.
16	A. I don't know.	16	Q. So, there are various ways you convey
17	Q. Okay. Do you have any idea how many faxes	17	information to dealers?
18	he if he had ever sent a fax before to 10,000	18	A. Correct.
19	numbers?	19	Q. And you don't have any record that
20	A. I don't know.	20	specifically said that City Select elected that
21	Q. Other than the Up2Drive logo and the drive	21	faxing was the way it wanted to receive information
22	check image, are you aware of any proprietary or	22	from
23	confidential information that Up2Drive gave	23	A. Yes.
	Cradit Craceta in connection with this relationship?	0.4	0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
24	CreditSmarts in connection with this relationship?	24	Q CreditSmarts?
24 25	A. Their XML criteria.	25	What is the data field that says that

	205		207
1	City Select chose faxing as the way to receive	1	Q. What what leads you to think that
2	information?	2	that's what happened?
3	 The very fact that they're in the 	3	A. The CreditSmarts customer service managers
4	CreditSmarts system.	4	were instructed to canvas the New Jersey area for
5	Q. So, if a dealer wants to receive	5	prospective auto dealerships.
6	information but not by fax, which field reflects	6	Q. Would CreditSmarts have been prospective
7	that?	7	even though they had already been entered into the
8	 A. They would be added to the do not fax 	8	system in November?
9	list.	9	MR. HAYES: You mean City Select?
10	Q. Which do not fax list?	10	MR. PIPER: Yeah. Sorry.
11	A. WestFax.	11	 A. No, they would not have been prospective;
12	Q. But if they tell you at the start-up point	12	but they would have been prospective for active
13	"Don't send us faxes, but you can call us," how	13	status or to let them know that there is a credit
14	would that be reflected in their customer database?	14	union launch local to their area which would have
15	 I have never experienced that. 	15	been New Jersey. New Jersey is a very difficult
16	Q. But you're not the one that talks to them.	16	state to lend in.
17	So	17	Q. (BY MR. PIPER) So, most likely someone
18	A. I've never experienced that interaction or	18	from CreditSmarts would have tried to contact City
19	that complaint from a customer service manager. It	19	Select in early 2012?
20	would be akin to saying, Don't give me money.	20	A. Correct. Hurricane Sandy flooded Excel
21	Q. Well, some people don't feel that way	21	Credit Union and that we weren't able to launch.
22	about faxing.	22	Q. And just to be clear, your records don't
23	A. This is the auto dealership industry, and	23	reflect who at City Select was contacted?
24	it's a standard for program guidelines and updates.	24	A. No.
25	Q. But is there anything in your customer	25	Q. And you don't know why they may have gone
	206		208
1	database that would reflect specifically what was	1	inactive at that point?
2	said to City Select about CreditSmarts' planning to	2	A. I do not.
3	send faxes to them?	3	Q. And you don't know from your records
4	A. No. If they opted out, there would be a	4	whether they even knew that they had any sort of
5	note; and there isn't a note.	5	participation in CreditSmarts before that phone
6	Q. And however that was phrased by the	6	call?
7	customer service representative is not reflected in	7	A. Before the 2011 call?
8	the database?	8	Q. Before the 2012 where they went inactive,
9	A. There is no note.	9	there's nothing in your records that reflects that
10	Q. Did CreditSmarts make a special effort to	10	anyone at City Select was even aware that they were
11	contact New Jersey dealers in early 2012?	11	in your records
12	A. Yes.	12	A. Yes.
13	Q. What was that effort?	13	Q beforehand?
14	A. CreditSmarts was nearing an agreement with	14	A. The data entry in 2011.
15	Excel Credit Union and already had an agreement with	15	Q. Right. But there's nothing that shows
16	Liberal Finance. Both located in New Jersey.	16	that when you contacted in 2012 they knew anything
17	Q. And, so, what was the effort you were	17	about that 2011 phone call?
18	making in the first quarter of 2012?	18	A. They're present in the system in 2011.
10	A. To speak to those auto dealerships in New	19	Q. Right. But I'm talking about the phone
19	Language and the Constitution of the Constitut	20	call that you think happened in 2012, and there's no
20	Jersey about the CreditSmarts system in the hopes to		to to more than to come and the second of th
20 21	engage future business with Excel Credit Union.	21	information in your system to verify that in that
20 21 22	engage future business with Excel Credit Union. Q. And do you have any reason to believe that	21 22	second phone call anyone knew what CreditSmarts was
20 21 22 23	engage future business with Excel Credit Union. Q. And do you have any reason to believe that that's what led to the contact with City Select in	21 22 23	second phone call anyone knew what CreditSmarts was or why they were being contacted or that they had
20 21 22	engage future business with Excel Credit Union. Q. And do you have any reason to believe that	21 22	second phone call anyone knew what CreditSmarts was

	209		211
1 There	are 70,000 auto dealerships in this country.	1	A. That's a mail center.
2 There	are 18,000 existing registered auto	2	Q. That's a mail center. Okay. So, that's
3 deale	rships in the CreditSmarts system. There's no	3	been CreditSmarts' mail address; but it's not where
4 purpo	se to have an auto dealership registered in the	4	its actual business offices are?
5 Credi	Smarts system if they haven't given consent	5	A. Correct. If CreditSmarts receives mail at
6 and h	aven't engaged.	6	the location of the business office, it will be
7 Q.	But my question was: Is there anything in	7	stolen.
8 your i	ecords that would reflect that anyone who	8	Q. Okay. And that's you continue to use
9 spoke	to CreditSmarts in February, 2012 had any	9	the El Alessandro address for mail; is that correct?
10 know	edge of any prior communications with	10	A. Correct.
11 Credi	Smarts by City Select?	11	Q. Is it accurate that you've created a
12 A.	The mere fact that they exist in the	12	backup of your Codero database of customers as of a
13 datab	ase indicates that. I'm sorry	13	couple of weeks ago
14 Q.	Well, suppose you got	14	A. Yes.
15 A.	I'm sorry I'm not	15	Q so that that information is preserved
16 Q.	different	16	in the event that we need or are granted access to
17	THE COURT REPORTER: Just a second. One	17	it?
18 at a ti	me.	18	A. Yes.
19 A.	I can't answer the question the way you	19	Q. And where is that backup of the database
20 want	it. I can't give you an answer that's not	20	maintained?
21 true.		21	A. In Arizona.
22 Q .	(BY MR. PIPER) Well, my question is:	22	Q. So, Codero did that for you? They created
23 There	's no record of here's what City Select said	23	a backup that's being stored somewhere in Arizona?
24 about	CreditSmarts when we called?	24	A. Correct.
25 A.	No.	25	Q. And that's in the possession of Codero?
1 Q.	210 There's no field	1	A. It's on their servers.
2	MR. GARCIA: Objection.	2	Q. Okay.
	(BY MR. PIPER) to say, Here's why they	3	MR. PIPER: Okay. Those were the
	to go inactive in your database?	4	follow-up questions I had. Who wants to go next?
	There's a notes section.	5	EXAMINATION
	Okay. And there's no notes for	6	BY MR. GARCIA:
	tSmarts?	7	Q. Mr. Ryan, you understand that you're still
	Correct.	8	under oath and all the same rules apply?
	Okay. And there's no written policy about	9	A. Yes.
	should go in the notes section?	10	Q. Good. At all times during CreditSmarts'
	Correct.	11	business relationship with any of BMW defendants or
	And if the City Select person said, My	12	Up2Drive including when the facsimile at issue
	hates junk faxes. I don't know who you are.	13	which we're talking about Exhibit 1 was sent, was
14 Stop	calling us, there's no written policy that that	14	CreditSmarts operating as an independent contractor
·	d go in the notes section?	15	of the BMW defendants?
15 shoul		1 /	
15 shoul 16 A.	That would be a customer complaint, and	16	A. Yes.
15 shoul 16 A. 17 that s	hould be in the notes section.	17	Q. What services did CreditSmarts perform for
15 shoul 16 A. 17 that s	hould be in the notes section. Is that in a written policy?	17 18	Q. What services did CreditSmarts perform for the BMW defendants as an independent contractor?
15 shoul 16 A. 17 that s 18 Q. 19 A.	hould be in the notes section. Is that in a written policy? I don't know.	17 18 19	Q. What services did CreditSmarts perform for the BMW defendants as an independent contractor?A. Application processing.
15 shoul 16 A. 17 that s 18 Q. 19 A.	hould be in the notes section. Is that in a written policy? I don't know. MR. PIPER: Why don't we take five minutes	17 18 19 20	Q. What services did CreditSmarts perform for the BMW defendants as an independent contractor?A. Application processing.Q. Okay. And I apologize in advance if some
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15 shoul 16 A. 17 that s 18 Q. 19 A. 20 21 and le 22 23 Q.	hould be in the notes section. Is that in a written policy? I don't know. MR. PIPER: Why don't we take five minutes et me see if I got any other questions? (Recess taken from 2:38 p.m. to 2:44 p.m.) (BY MR. PIPER) Well, does CreditSmarts	17 18 19 20 21 22 23	 Q. What services did CreditSmarts perform for the BMW defendants as an independent contractor? A. Application processing. Q. Okay. And I apologize in advance if some of this seems a little repetitive. I just want to make sure I have a clear picture of exactly what was going on.
15 shoul 16 A. 17 that s 18 Q. 19 A. 20 21 and le 22 23 Q.	hould be in the notes section. Is that in a written policy? I don't know. MR. PIPER: Why don't we take five minutes et me see if I got any other questions? (Recess taken from 2:38 p.m. to 2:44 p.m.) (BY MR. PIPER) Well, does CreditSmarts to business at 231 East Alessandro Boulevard in	17 18 19 20 21 22	 Q. What services did CreditSmarts perform for the BMW defendants as an independent contractor? A. Application processing. Q. Okay. And I apologize in advance if some of this seems a little repetitive. I just want to make sure I have a clear picture of exactly what was

213 215 relationship with dealerships typically through cold anyone -- did any of the BMW defendants or Up2Drive 1 2 2 calling? ever provide anyone at CreditSmarts with their 3 3 A. Yes. authority to compose Exhibit 1? 4 4 Q. Okay. And when they agreed to have A. No one but myself was authorized to speak CreditSmarts -- you know, let's come back to that. to BMW or Up2Drive personnel regarding any marketing 6 6 Did CreditSmarts ever obtain consent items other than myself. 7 from either of the BMW defendants or Up2Drive to 7 Q. So, that would be -- the answer would be 8 8 advertise their products or services via facsimile no? 9 on their behalf? 9 A. No. 10 Q. Okay. Thank you. A. No. 10 11 Q. Did CreditSmarts ever obtain from either 11 Who caused Exhibit 1 to be 12 of the BMW defendants or Up2Drive the right to use 12 transmitted? 13 or their consent to use their trademarks, logos, or 13 A. Alex Gomez. 14 any intellectual property in facsimile 14 Q. And I previously asked you about authority 15 15 to create Exhibit 1 and the content therein; but as advertisements --16 A. No. 16 far as the transmission is concerned, to your 17 17 Q. -- including the one at issue Exhibit A -knowledge, did anyone at CreditSmarts obtain consent 18 from the defendants or Up2Drive to send Exhibit 1 on 18 1? Excuse me. 19 19 A. No. their behalf? Q. Do you know why Alex Gomez created 20 A. No. 20 21 21 Exhibit 12 Q. Did -- to your knowledge, did anyone at 22 A. I do not. 22 CreditSmarts receive any direction regarding 23 23 transmission -- direction from the BMW defendants or Q. And to be clear, did anyone at 24 CreditSmarts obtain consent from either of the BMW 24 Up2Drive regarding Exhibit 1? 25 defendants or Up2Drive to create the facsimile at 25 A. No. 214 216 1 Q. Did anyone at CreditSmarts -- to your 1 issue -- to create Exhibit 1? 2 A. No. 2 knowledge, did anyone at CreditSmarts inform either 3 3 Q. Did anyone at CreditSmarts ever receive of the BMW defendants or Up2Drive that it sent any direction from either of the BMW defendants or 4 the -- that it transmitted Exhibit 1 prior to the 5 Up2Drive regarding the creation of Exhibit 1? 5 e-mail from Jake Thompson indicating that he wanted 6 6 to discuss a piece of facsimile that was transmitted 7 Q. Did any -- did either of the BMW 7 by your company? 8 defendants -- did either of the BMW defendants or 8 A. No. 9 Up2Drive ever indicate to anyone at CreditSmarts 9 Q. To your knowledge, did CreditSmarts ever 10 10 provide either of the BMW defendants or Up2Drive that CreditSmarts had the authority to -- had the authority to compose the facsimile -- or Exhibit 1 11 with a list of individuals or businesses to which 11 12 12 on their behalf? Exhibit 1 was transmitted? 13 13 14 MR. PIPER: Can you read that back? 14 Q. To your knowledge, are you or is anyone at 15 (Whereupon the requested portion of 15 CreditSmarts aware of any direct contact or 16 testimony was read back.) 16 interaction between either of the BMW defendants or 17 17 MR. PIPER: I'm going to object to the Up2Drive and the alleged recipients of Exhibit 1? 18 foundation and vagueness. 18 19 Q. (BY MR. GARCIA) To reiterate, did --19 Q. Do you recall what agreements were in 20 MR. PIPER: It seems like you can ask him 20 place governing the relationship between 21 what discussions he had but -- unless you think he's 21 CreditSmarts and the BMW defendants or Up2Drive? 22 the omniscient CEO, asking him if anybody else at 22 A. Yes. 23 the company did it is beyond his scope of knowledge. 23 Q. Okay. Do you remember what those 24 24 MR. GARCIA: Fair. agreements were? 25 Q. (BY MR. GARCIA) To your knowledge, did 25 A. A Marketing Service Agreement and a vendor

	217		219
1	agreement, independent contractor agreement.	1	A. I couldn't recite it verbatim.
2	Q. Pursuant to the terms of the Master	2	Q. Does CreditSmarts have any records
3	Services Agreement, which you previously referenced,	3	identifying the individuals or businesses to whom
4	was CreditSmarts authorized, to your knowledge, to	4	Exhibit 1 was transmitted?
5	compose any advertisements for the goods or services	5	A. No.
6	of either of the BMW defendants or Up2Drive without	6	Q. Who manned the telephone number in the,
7	the prior written approval of BMW FS?	7	what appears to be, an opt-out notice at the base of
8	A. No.	8	Exhibit 1?
9	Q. And by that I mean BMW Financial Services.	9	A. Which telephone number?
10	A. No.	10	Q. There's the base of Exhibit 1 there
11	Q. Pursuant to the terms of the Up2Drive	11	appears to be a telephone number and a facsimile
12	agreement, was CreditSmarts authorized to compose	12	number?
13	any advertisements for the goods or services of	13	A. The telephone number is CreditSmarts'
14	either of the BMW defendants or Up2Drive without the	14	telephone number. No.
15	prior written approval of BMW FS?	15	Q. So, to be clear
16	A. No.	16	A. No, no, no.
17	Q. Pursuant to the terms of either the MPSA	17	MR. HAYES: Sean, let him ask the question
18	or the Up2Drive agreement, to your knowledge, was	18	first.
19	CreditSmarts authorized to transmit any	19	Q. (BY MR. GARCIA) So, to be clear, who
20	advertisements for the goods or services of either	20	managed the 1(800)915-2571 number?
21	of the BMW defendants or Up2Drive by facsimile?	21	A. WestFax.
22	A. No.	22	Q. WestFax. And, to your knowledge, did
23	Q. And, again, I apologize if this gets a	23	WestFax allow recipients to opt out of receiving
24	little repetitive.	24	facsimiles using that number 24 hours a day?
25	Where did CreditSmarts retain the	25	A. Yes.
	218		220
1	218	1	220
1	list of recipients to which the facsimile was sent?	1	Q. Seven days a week?
2	list of recipients to which the facsimile was sent? A. I don't know.	2	Q. Seven days a week? A. Yes.
2	list of recipients to which the facsimile was sent? A. I don't know. Q. How was CreditSmarts' list of the	2 3	Q. Seven days a week?A. Yes.Q. And who managed the facsimile number that
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2 3 4 5	list of recipients to which the facsimile was sent? A. I don't know. Q. How was CreditSmarts' list of the facsimile recipients compiled? And by that I mean presumably the facsimile was sent. The recipients	2 3 4 5	Q. Seven days a week?A. Yes.Q. And who managed the facsimile number that appears to be (888)343-9903?A. CreditSmarts does.
2 3 4 5 6	list of recipients to which the facsimile was sent? A. I don't know. Q. How was CreditSmarts' list of the facsimile recipients compiled? And by that I mean presumably the facsimile was sent. The recipients of the facsimile were pulled from the database	2 3 4 5 6	 Q. Seven days a week? A. Yes. Q. And who managed the facsimile number that appears to be (888)343-9903? A. CreditSmarts does. Q. So, if a recipient was to respond in
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. I don't know. Q. How was CreditSmarts' list of the facsimile recipients compiled? And by that I mean presumably the facsimile was sent. The recipients of the facsimile were pulled from the database that's been discussed several times in this deposition. Where did how was that list compiled? A. That would be a search by for dealerships in CreditSmarts and a CSB export. Q. And, so, were these dealerships included in this list as a result of cold call efforts? A. Yes. Q. Was everyone in this list included in there as a result of cold call efforts? A. Yes. Q. And when CreditSmarts cold called these	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	 Q. Seven days a week? A. Yes. Q. And who managed the facsimile number that appears to be (888)343-9903? A. CreditSmarts does. Q. So, if a recipient was to respond in accordance with this notice saying to be removed from this list and including the number to be removed to that number, it would be delivered to CreditSmarts? A. Yes. Q. Was the you previously stated just refresh my memory. You previously stated that any facsimile to this number would be received by an e-fax service or by an actual fax machine? A. An e-fax service. Q. And the e-fax service would receive was able to receive facsimiles 24 hours a day, seven days a week?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	list of recipients to which the facsimile was sent? A. I don't know. Q. How was CreditSmarts' list of the facsimile recipients compiled? And by that I mean presumably the facsimile was sent. The recipients of the facsimile were pulled from the database that's been discussed several times in this deposition. Where did how was that list compiled? A. That would be a search by for dealerships in CreditSmarts and a CSB export. Q. And, so, were these dealerships included in this list as a result of cold call efforts? A. Yes. Q. Was everyone in this list included in there as a result of cold call efforts? A. Yes. Q. And when CreditSmarts cold called these dealerships, was it CreditSmarts' policy to obtain expressed permission to receive facsimiles from CreditSmarts? A. Yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 Q. Seven days a week? A. Yes. Q. And who managed the facsimile number that appears to be (888)343-9903? A. CreditSmarts does. Q. So, if a recipient was to respond in accordance with this notice saying to be removed from this list and including the number to be removed to that number, it would be delivered to CreditSmarts? A. Yes. Q. Was the you previously stated just refresh my memory. You previously stated that any facsimile to this number would be received by an e-fax service or by an actual fax machine? A. An e-fax service. Q. And the e-fax service would receive was able to receive facsimiles 24 hours a day, seven days a week? A. Yes. Q. If a dealership that was in your database and had previously consented to receive facsimiles
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	list of recipients to which the facsimile was sent? A. I don't know. Q. How was CreditSmarts' list of the facsimile recipients compiled? And by that I mean presumably the facsimile was sent. The recipients of the facsimile were pulled from the database that's been discussed several times in this deposition. Where did how was that list compiled? A. That would be a search by for dealerships in CreditSmarts and a CSB export. Q. And, so, were these dealerships included in this list as a result of cold call efforts? A. Yes. Q. Was everyone in this list included in there as a result of cold call efforts? A. Yes. Q. And when CreditSmarts cold called these dealerships, was it CreditSmarts' policy to obtain expressed permission to receive facsimiles from CreditSmarts? A. Yes. Q. To your knowledge, what did the script	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 Q. Seven days a week? A. Yes. Q. And who managed the facsimile number that appears to be (888)343-9903? A. CreditSmarts does. Q. So, if a recipient was to respond in accordance with this notice saying to be removed from this list and including the number to be removed to that number, it would be delivered to CreditSmarts? A. Yes. Q. Was the you previously stated just refresh my memory. You previously stated that any facsimile to this number would be received by an e-fax service or by an actual fax machine? A. An e-fax service. Q. And the e-fax service would receive was able to receive facsimiles 24 hours a day, seven days a week? A. Yes. Q. If a dealership that was in your database and had previously consented to receive facsimiles responded in accordance with this notice to be

221 223 A. A customer service manager would dial the BMW representative -- a representative of the BMW 1 1 2 2 915-2571 number and enter Extension 40410. defendants and approved by them, correct? 3 Q. And then? 3 A. Correct. 4 A. Then they would enter the auto dealerships 4 Q. At any point in time were you authorized fax number, and it would be stored on WestFax. to use any of the images -- to your knowledge, at 6 Q. So, WestFax would maintain the list of 6 any point in time was anyone at CreditSmarts 7 dealerships that had opted out of receiving 7 authorized to use any of the images or information 8 8 facsimile advertisements? contained herein to create any other document that 9 9 was transmitted outside of CreditSmarts or BMW? A. Correct. 10 10 Q. I'd like to call your attention to A. No. 11 Exhibit 19. You can take a look at that, which is 11 Q. Just to be clear, the test e-mail that was 12 the instruction document. 12 previously referenced, what -- in terms of the 13 A. Okay. 13 exhibits, I believe you said that the test e-mail 14 Q. Now, what was the purpose of this 14 consisted of something that had previously come up. 15 15 document? What exactly was contained in the test e-mail? 16 A. To provide instructions and a phone number 16 A. The image of Up2Drive and the check with a 17 brief background. 17 for auto dealerships to call. Q. So, when an auto dealership created an 18 18 Q. And that had not been approved by 19 account with CreditSmarts' Web site and would log 19 anyone -- any representative of the BMW defendants in, they would submit an application? or Up2Drive? 2.0 20 21 A. Correct. 21 A. No. 22 Q. And when they submitted the information on 22 Q. And this was -- the e-mail with that 23 23 a given application, that information would be run information was sent to a list of personal contacts? 24 and then CreditSmarts would automatically provide a 24 A. I was testing out the Vertical Response 25 list of lenders that qualified or would the 25 software. Never used it before. Didn't know that 222 224 if I sent an e-mail and if someone "Liked" it, it 1 dealerships select lenders from which they wanted to 1 2 be considered? 2 would show up on Facebook. A. Both. 3 I sent that to -- I know I sent it to 3 4 Q. Okay. So, if a dealer were to select 4 Mark Leindach from Exclusive Car and Truck because 5 5 Up2Drive and three other lenders and submit the he and I had a conversation about Up2Drive; and 6 application data, it would return -- the 6 beyond that, I don't know who I sent it to. I know 7 CreditSmarts Web sites would provide a results page 7 that the reason I used them is that -- that profile 8 is that he asked for information about it; and I 8 presumably indicating which of those three that they 9 9 chose were eligible as well as listing other lenders thought, Well, let's just try this thing out. 10 10 which they did not select but would also be eligible Q. Can you clarify what you mean by "it" in 11 11 that response? You said that he wanted to try it --12 12 A. He asked about Up2Drive. A. Correct. 13 Q. Okay. Would anyone be able to see this 13 Q. Okay. 14 Exhibit 19 without being able to log in to the 14 A. He's a personal friend. 15 CreditSmarts Web site? 15 Q. And I'd just like to clarify a point that 16 A. No. 16 was made recently. You said that if a dealership 17 Q. Would anyone have -- by this I mean any 17 opted out of faxes, there would be a note in a dealers that could have potentially been a recipient 18 database. And which database were you talking 18 19 19 of Exhibit 1. Was it possible for them to have a about? 20 user account set up with CreditSmarts.com without 20 MR. PIPER: I'm going to object that that 21 having previously consented to receive facsimiles? 21 misstates the testimony. 22 2.2 A. No. Q. (BY MR. GARCIA) If a dealership opted out 23 Q. The format of this document and the 23 of receiving faxes, would there be a note in any of substantive information contained therein -- and by 24 24 the databases of dealerships maintained by 25 25 "this" I mean Exhibit 19 -- was negotiated with a CreditSmarts?

14 MR. HAYES: Jon, would you care to 15 respond; or do you want me to ask my questions and 16 then 17 MR. PIPER: I got about three questions. 18 So, why don't you go ahead. 19 MR. HAYES: You want me to go ahead? 20 MR. PIPER: Why don't you go ahead. 21 EXAMINATION 22 BY MR. HAYES: 23 Q. Sean, from listening to the depositions 24 today and from our prior involvement, do you 25 understand this lawsuit to be about the 26 December 27th, 2012 fax? 27 A. Yes. 28 Q. And did CreditSmarts, in its answer in 29 dother before the functional and the protections and deny that the opt-out violation was inadequate? 4 A. Yes. 5 Q. And did they take exception and deny that the opt-out violation was inadequate? 4 A. Yes. 5 Q. And did they take exception and deny that is about the fax; and then we launched into a lengthy discussion about CreditSmarts' business, been in business. It seems like the 15 CreditSmarts.com business that you said started 16 in 2004? 17 A. Yes. 18 A. Ves. 19 A. Very much so. 20 Q. Okay. So, tell me and I'm not a technological-type person, but would this database have one or more protections like maybe do I remember SQL Server being a method of protection SS something or other? Tell me about, just real briefly, how the protections work. 226 226 226 226 227 228 229 240 250 260 270 261 271 272 281 292 293 294 295 295 296 296 297 297 298 298 299 299 290 290 291 291 291 291		225		227
2 Q. Which of the databases would include the note that the that a dealership had opted out of receiving faxes? A. The CreditSmarts member dealer base. Q. And that was the just to be clear the Codero database? A. Correct. I'm maniacal about notes. I'm yery upset that people don't take them as they should. MR. GARCIA: I'm going to go ahead and reserve any right to ask follow-up questions, but at this time point that's all I have. MR. HAYES: Jon, would you care to respond; or do you want me to ask my questions and fethem So, why don't you go ahead. MR. HAYES: You want me to go ahead? MR. HAYES: You want me to go ahead. MR. HAYES: You want me to go ahead. MR. HAYES: You want me to go ahead. EXAMINATION MR. HAYES: Q. Sean, from listening to the depositions to doar yand from our prior involvement, do you understand this lawsuit to be about the 226 December 27th, 2012 fax? A. Yes. Q. And did CreditSmarts, in its answer in other pleadings and discussions, deny that they violated the TCPA? A. Yes. Q. And did they take exception and deny that the opt-out violation was inadequate? A. Yes. Q. Now so, you understand that the lawsuit is about the fax; and then we launched into a lengthy discussion about CreditSmarts' business, been in business. It seems like the CreditSmarts. com business that you said started in 2004? A. Correct. A. Orrect. Q. And dire there is successful in getting a car buyer who needs financing, if they so choose to use you rever who needs financing, if they so choose to use you rever who needs financing, if they so choose to use you rever who needs financing, if they so choose to use you rever who needs financing, if they so choose to use you rever who needs financing, if they so choose to use you rever who needs financing, if they so choose to use you rever who needs financing, if they so choose to tear busy port with reflect the subject with state accurate? A. Correct. Q. And that all seems to be done in a secure environment because there's credit information bein exposed an	1	A. Yes.	1	Q. So, in essence, you have some independent
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17 MR. PIPER: I got about three questions. 18 So, why don't you go ahead. 19 MR. HAYES: You want me to go ahead? 20 MR. PIPER: Why don't you go ahead. 21 EXAMINATION 22 BY MR. HAYES: 23 Q. Sean, from listening to the depositions 24 today and from our prior involvement, do you 25 understand this lawsuit to be about the 26 December 27th, 2012 fax? 2 A. Yes. 3 Q. And did CreditSmarts, in its answer in 4 other pleadings and discussions, deny that they 5 violated the TCPA? 4 A. Yes. 5 Q. And did they take exception and deny that the opt-out violation was inadequate? 4 A. Yes. 5 Q. Now so, you understand that the lawsuit is about the fax; and then we launched into a lengthy discussion about CreditSmarts' business, business model, business experience, how long it's been in business. It seems like the 15 CreditSmarts.com business that you said started in 2004? 18 that drive you to take precautions when you set up this Web site? A. Very much so. Q. Okay. So, tell me and I'm not a technological-type person, but would this database have one or more protections like maybe do I remember SQL Server being a method of protection SS something or other? Tell me about, just real briefly, how the protections work. 226 226 227 A. It's in an SAS 70 lockdown facility. No one has access to the data center, not President Obama, not anyone that could breach a security element. And there are requirements by law under the Frank Dodd Act that require auto dealerships to store their information securely, which unfortunately most don't. Most independent dealerships don't do not. Q. Now so, you understand that the lawsuit is about the fax; and then we launched into a lengthy discussion about CreditSmarts' business, business model, business rogetiner, how long it's been in business. It seems like the CreditSmarts business that you said started in 2004? A. Correct.			16	Q. And are there laws and other regulations
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16 in 2004? 16 A. Correct.				9
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l · · · · · · · · · · · · · · · · · · ·		A. 2005.	17	Q. And it all seems to be set up at the start
18 Q. 2005 is it's self-executing? 18 so that when you have a lender for example, the	17			·
	18	A. Yes.		BMW defendant, Up2Drive it seems to me there's
	18 19		20	some technology going on so that they can hook up to
	18 19 20	Q. And it's Web driven?		this CraditSmarts com?
	18 19 20 21	A. Yes.	21	
	18 19 20 21 22	A. Yes.Q. And the idea is is what I would call a	22	A. Yes.
	18 19 20 21 22 23	A. Yes.Q. And the idea is is what I would call a lending tree model?	22 23	A. Yes.Q. And it seems to me that they also want to
25 tree model. 25 secure; is that correct as well?	18 19 20 21 22 23 24	A. Yes.Q. And the idea is is what I would call a lending tree model?A. An indirect business-to-business lending	22 23 24	A. Yes. Q. And it seems to me that they also want to make sure that everything is confidential and

		1	
	229		231
1	A. Correct.	1	to just provide the Master Professional Services
2	Q. And they understand that from the sales	2	Agreement as Defendant's Exhibit A.
3	pitch and from your discussions and from what you	3	(Deposition Exhibit A was marked.)
4	call the data exchange what you do?	4	Q. (BY MR. HAYES) Now, if you would look at
5	A. Yes.	5	that agreement; and let's go right now to the
6	Q. The services you provide?	6	signature page. Is that your signature?
7	A. Yes.	7	A. Yes.
8	Q. And would you also say they understand	8	Q. And do you recognize this agreement?
9	what you don't do by definition?	9	A. Yes.
10	A. Yes.	10	Q. And did you read it before you signed it?
11	 Q. And this all seems to transpire not only 	11	A. I did.
12	in a secure fashion, but it seems to me that there's	12	Q. And did you understand it?
13	a lot of e-mails and a lot of electronics stuff	13	A. I did.
14	going back and forth?	14	Q. Okay. And was this agreement consistent
15	A. No.	15	with the business relationship that you were going
16	Q. In terms of the correspondence with	16	to have with the BMW defendants?
17	respect to the data exchange?	17	A. Yes.
18	A. Yes.	18	Q. And it primarily related to making sure
19	Q. And there seems to be in the data	19	the data exchange got done in a professional,
20	exchange with BMW, it seemed to follow the data	20	proper, secure manner?
21	exchange with other lenders. There's some common	21	A. Yes.
22	elements to that?	22	Q. And you do see in there where it says that
23 24	A. Yes. Q. Okay. And then BMW said, Okay, we're	24	you're not to publicize or to advertise? A. Yes.
25	going to do this; but we need to have some	25	Q. Now, let me just shift gears for a second.
23	going to do this, but we need to have some	25	Q. Now, let me just shift gears for a second.
	230		232
1	agreements with CreditSmarts?	1	It seems to me in the lengthy discussion of your
2	A. Yes.	2	business that faxing is a nominal part of your
3	Q. And you heard Mr. Garcia say that you	3	business; is that true?
4	weren't going to be partners. You were an	4	A. Yes.
5	independent contractor?	5	Q. And it seems like, from our discussions,
6	A. Correct.	6	that, for lack of a better adjective, the one fax
7	Q. And do you understand that to be someone	7	that is the subject of the plaintiff's complaint is
8	that's not an employee or under the dominion and	8	nominal on top of nominal and perhaps you mentioned
9	control of anybody else, independent? Is that what	9	unusual or something that if you had to do it all
10	you understood?	10	over again, you wouldn't even have sent out in the
11	A. Correct.	11	first place; is that accurate?
12	Q. And did you also understand that you were	12	MR. PIPER: I'm going to object to the
13	not to publicize anything or advertise anything?	13	form of the question.
14	A. Yes.	14	A. Yes, it is.
15	Q. And was that okay with you because that	15	Q. (BY MR. HAYES) So, I'm trying to put in
16	was beyond the purview of the services that you	16	perspective the from very small to very high, in
17	provided?	17	your opinion, what role faxing plays in
18	A. Yes.	18	CreditSmarts' business?
19	Q. Okay. And with respect to exhibit	19	MR. PIPER: Again, I'm going to well,
20	well, what I'll	20	is your question just what role does faxing play in
21	MR. HAYES: How do you want to label	21 22	his business?
22	these? Defendant's did you use numbers?	23	MR. HAYES: In his opinion, what role does
23	MR. PIPER: Yeah. You can do whatever you	24	faxing play in CreditSmarts' business? MR. PIPER: Well, I guess I'm not sure if
24 25	want. MR. HAYES: So, let's say that I'd like	25	you're asking for him to tell you what role it plays
	with the teo. 50, let's say that to like	1 23	you to asking for thin to tell you what fole it plays
23			

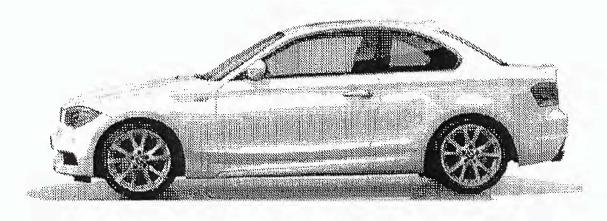
	233		235
1	in his business; or are you asking him to	1	A. Yes.
2	characterize that?	2	Q. Okay. Now, having had those agreements
3	MR. HAYES: No. The first one.	3	and having the normal course of exchanging the data,
4	MR. PIPER: Okay.	4	do you think that the BMW defendants took
5	Q. (BY MR. HAYES) Is faxing however you	5	affirmative steps to protect themselves from you
6	want to characterize it.	6	doing any publication or advertising?
7	A. Faxing is updated program guidelines is	7	MR. PIPER: I'm going to object to the
8	a standard in the industry vertical of used car	8	form of the question.
9	dealerships so that they can obtain information from	9	A. I believe they did; and as a result, when
10	different loan programs. Since this lawsuit has	10	this product launched, I had a communication with
11	arisen, no fax has subsequently gone out, no rate	11	the office manager indicating that no information
12	sheets have been updated, and CreditSmarts' business	12	should go out with respect to Up2Drive.
13	hasn't suffered other than complaints.	13	Q. (BY MR. HAYES) Okay. So, Up the BMW
14	Q. Okay. And speaking of complaints, when	14	defendants, also known as Up2Drive, in your mind
15	we're talking about the opt-out notice that was on	15	clearly communicated to you what you could do and
16	the bottom of Exhibit 1, did you ever receive any	16	what you could not do?
17	any complaints from any recipients or other people	17	A. Yes.
18	claiming that their opt-out notice wasn't complied	18	Q. Okay. Do you have any knowledge that
19	with?	19	BMW that BMW defendants or Up2Drive, as we
20	A. No.	20	commonly refer to them had any knowledge,
21	Q. And in your mind do you think that the BMW	21	awareness, or participation in Exhibit 1 fax?
22	defendants took affirmative steps with Defendant's	22	A. No.
23	Exhibit 1 and let me stop right there and ask the	23	MR. HAYES: And I want to enter as an
24	exhibit entered into as an exhibit, Defendant's	24	exhibit Defendant's Exhibit C, the affidavit of
25	Exhibit 2 which is the Up2Drive Vendor Services	25	Mr. Ryan.
	004		
	234		236
1		1	
1 2	Agreement.	1 2	(Deposition Exhibit C was marked.)
		2	(Deposition Exhibit C was marked.) Q. (BY MR. HAYES) Now, is this an affidavit
2	Agreement. THE COURT REPORTER: B or 2? MR. HAYES: I think it's Defendant's 2.		(Deposition Exhibit C was marked.) Q. (BY MR. HAYES) Now, is this an affidavit that you that you signed?
2	Agreement. THE COURT REPORTER: B or 2?	2 3	(Deposition Exhibit C was marked.) Q. (BY MR. HAYES) Now, is this an affidavit that you that you signed? A. Yes.
2 3 4	Agreement. THE COURT REPORTER: B or 2? MR. HAYES: I think it's Defendant's 2. THE COURT REPORTER: Okay. Because we did	2 3 4	(Deposition Exhibit C was marked.) Q. (BY MR. HAYES) Now, is this an affidavit that you that you signed?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Agreement. THE COURT REPORTER: B or 2? MR. HAYES: I think it's Defendant's 2. THE COURT REPORTER: Okay. Because we did the other one as B. MR. GARCIA: Yeah, it's B. MR. HAYES: I'm sorry. B. I'm very sorry. Thank you. (Deposition Exhibit B was marked.) Q. (BY MR. HAYES) Now, I'll ask you, Mr. Ryan, the same question here as to with respect to this agreement. Did you sign this agreement? A. Yes, I did. Q. And did you read it before you signed it? A. I did. Q. And did you understand it? A. Yes. Q. And does this agreement also	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	(Deposition Exhibit C was marked.) Q. (BY MR. HAYES) Now, is this an affidavit that you that you signed? A. Yes. Q. And did you read it before you signed it? A. I did. Q. And is that your signature right there? A. It is. Q. Okay. And, so, does this affidavit is it still accurate and complete in all respects? A. Yes. Q. Okay. Thank you. MR. HAYES: I have no further questions. FURTHER EXAMINATION BY MR. PIPER: Q. Okay. I just got a few questions. First of all, that affidavit that was marked as Exhibit C, if you turn to Paragraph 7 well, first of all, there are exhibits referenced in
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237 239 MR. HAYES: For the record, they are 1 MR. HAYES: No. He said -- he said he 1 2 2 Plaintiff's Exhibits A -- Defendant's Exhibits A and didn't remember the affidavit. 3 3 A. I don't remember. I most likely have it. 4 MR. PIPER: Are Exhibits 1 and 2, and then 4 There's 5 inches of documents. I don't recall. 5 there's a reference to Exhibit 3 and then a 5 Q. (BY MR. PIPER) So, by attaching his affidavit, do you intend to say under oath that 6 reference to Exhibit 4 6 7 Q. (BY MR. PIPER) In any event, none of those 7 every sentence in his affidavit is true? 8 8 A. Yes. exhibits are attached to Exhibit 3 (sic)? Whether 9 that matters is another question. I just want to 9 Q. And do you know that it's true based on 10 10 clarify, the exhibits that are supposed to go with your personal knowledge, or are you relying on the 11 the affidavit aren't here with what's been marked, 11 fact that Barry Clark wouldn't say anything that 12 right? 12 wasn't true? 13 13 A. Correct. A. I'm relying on the fact that -- I don't 14 Q. Now, turning to the last of the exhibits 14 know Barry Clark, but their service is a machine. 15 MR. GARCIA: Objection. 15 which is four on page 3, that's an affidavit from 16 16 the fax broadcaster. Q. (BY MR. PIPER) So, if I ask you questions 17 about how the WestFax service works, you can tell me Have you ever seen that affidavit 17 18 from the fax broadcaster? 18 the truth; is that correct? 19 A. Pardon me? 19 A. Yes Q. Have you ever seen the affidavit from the 20 MR. GARCIA: Objection. 2.0 21 Q. (BY MR. PIPER) And do you know everything 21 fax broadcaster? 22 A. I don't recall. 22 there is to know about what relationship WestFax had 23 Q. Okay. You don't personally vouch for the 23 with BMW? Have you looked at their records to see 24 24 truth of everything the fax broadcaster says, do what faxing they've done for BMW before? 25 25 A. No. you? 238 240 A. I -- I -- I don't understand the 1 Q. So, in your affidavit here where you say 1 WestFax had no contact relationship or business with 2 relationship. 2 3 BMW FS at the top of page 3, you don't know whether 3 Q. All right. The fact that you're attaching a -- or purporting to attach an affidavit by 4 that's true or not? 5 5 somebody else to your exhibit, you're not saying A. As it pertains to this one fax, yes, it is 6 that -- under oath that everything they said is 6 true. 7 true, are you? 7 Q. But this doesn't say as it pertains to 8 this fax. This says that you've attached an 8 A. With respect to the WestFax service? 9 9 Q. Right. affidavit for the broadcaster that broadcasted the 10 10 one fax and that it has no contact relationship or A. It's a machine. 11 business with BMW Financial Services; and you don't 11 Q. But are you telling me that you're swearing under oath that everything Barry Clark says 12 know whether that's true except as to this one fax? 12 13 about this case is true? 13 MR. HAYES: Jon, I object. You're not 14 MR. GARCIA: Objection. 14 reading what it says. 15 15 A. I don't -- I don't understand the MR. PIPER: Well, I'm objecting to the 16 question. 16 fact that you're attaching one guy's affidavit to 17 Q. (BY MR. PIPER) Okay. Are you vouching for 17 somebody else's affidavit when he has no personal 18 knowledge about the fax. 18 everything that Barry Clark says, that based on your 19 19 personal knowledge, what he's saying is true? MR. HAYES: And you noted that objection, 20 A. Can we review the affidavit? 20 but what you're saying is not what the affidavit 21 Q. Well, you'd have to look at the affidavit 21 says. Mr. Ryan is saying the affidavit from the fax 22 2.2 first, right? broadcaster stating it broadcasted the one fax for 23 A. (Nods head.) 23 CreditSmarts in December and that it had no contact 24 Q. And you haven't done that; is that 24 relationship with the BMW FS as attached as 25 25 correct? You're nodding. Exhibit 4.

	241		243
1	MR. PIPER: Right.	1	on Facebook?
2	MR. HAYES: He's just restating what the	2	A. I'm not a lawyer.
3	affidavit says.	3	MR. GARCIA: Objection.
4	Q. (BY MR. PIPER) So, all you know about	4	Q. (BY MR. HAYES) But do you think it would
5	Barry Clark is you're restating what he said; but	5	have violated the agreement?
6	you don't know whether that's true or not, do you?	6	A. I don't know.
7	A. They have no relationship regarding this	7	MR. HAYES: That calls for a legal
8	one fax. Yes.	8	A. I'm not a lawyer.
9	Q. But other than that, it could be that they	9	MR. HAYES: legal conclusion.
10	sent faxes for BMW every day. You don't know one	10	Q. (BY MR. PIPER) Okay. Well, a lot of
11	way or the other, right?	11	people have asked you about what your agreement was.
12	A. That's not my statement.	12	Would your agreement with BMW have prevented you
13	Q. Well, you say it has no contact	13	from e-mailing documents with their trademarks,
14	relationship or business. Do you know that WestFax	14	logos, and images?
15	has no contact relationship or business?	15	A. I think that would be up to counsel
16	A. And the second part of that is with	16	interpretation.
17	respect to Exhibit 1.	17	MR. GARCIA: Objection.
18	Q. Well, it doesn't say with respect to	18	Q. (BY MR. PIPER) So, you don't have an
19	Exhibit 1. It says is attached as Exhibit 4 which	19	opinion about that?
20	is his affidavit.	20	A. I don't.
21	In any event, what Barry Clark says	21	Q. And you don't know whether your agreement
22	Barry Clark can speak for himself; and you're not	22	with them prevented you from sending e-mails like
23	saying that what Barry Clark says is true or false	23	that?
24	because you don't you've never even uploaded a	24	A. I don't.
25	fax on WestFax as far as you can recall, right?	25	Q. I just wanted to clarify one thing about
	242		244
1	A. As far as I can recall. And I've never		
	A. As lai as i call lecali. Allu i ve llevel	1	the submission process because I thought the way I
2	met Barry.	2	understood it and then the way he asked it was a
3	met Barry. Q. Right. So, you can't tell me how Barry	2 3	understood it and then the way he asked it was a little different. So, I just want to make sure I
3 4	met Barry. Q. Right. So, you can't tell me how Barry Clark runs his business	2 3 4	understood it and then the way he asked it was a little different. So, I just want to make sure I got it straight.
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3 4 5 6	met Barry. Q. Right. So, you can't tell me how Barry Clark runs his business A. No. Q or what relationship he has with BMW?	2 3 4 5 6	understood it and then the way he asked it was a little different. So, I just want to make sure I got it straight. So, I'm the car dealer. I want to submit a loan for a customer. I go to CreditSmarts.
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	245	247
1	(Whereupon the deposition concluded at	1 STATE OF COLORADO)
2	3:28 p.m.)	2)SS. REPORTER'S CERTIFICATE
3	3.20 p.m.)	3 COUNTY OF ARAPAHOE)
4		4 I, JESSICA R. BENSON, do hereby certify that I am
5		5 a Certified Shorthand Reporter and Notary Public within the
6		6 state of Colorado; that previous to the commencement of the
7		7 examination, the deponent was duly sworn by me to testify to
8		8 the truth.
9		9 I further certify that this deposition was taken
10		in shorthand by me at the time and place herein set forth
11		and was thereafter reduced to typewritten form, and that the
12		12 foregoing constitutes a true and correct transcript.
13		13 I further certify that I am not related to, 14 employed by, nor counsel of any of the parties or attorneys
14		
15		herein, nor otherwise interested in the result of the within action.
		17 In witness whereof, I have affixed my signature
16		18 this 27th day of March, 2014.
17		19
18		20
19		21
20		PATTERSON REPORTING & VIDEO
21		22 Jessica R. Benson
22		Certified Shorthand Reporter
23		23
24		24
25		25
	246	248
1	I, Sean Ryan, do hereby certify that I	1 PATTERSON REPORTING & VIDEO, INC.
2	have read the foregoing transcript and that the same	Highpoint 2 2170 South Parker Road, Suite 263
3	transcript and accompanying correction sheets, if any,	Denver, Colorado 80231
4	constitute a true and complete record of my testimony.	3 4 March 27, 2014
5		5 WILLIAM B. HAYES Attorney at Law
6		6 257 Jackson Street
7		Denver, Colorado 80206
	Sean Ryan	8 Case Name: City Select vs. BMW Bank of North America Case No.: 13-cv-04595-NLH-JS
8	[] A manufacture of the chart	9 Deposition of: Sean Ryan
9 10	[] No Changes [] Amendments attached	The deposition in the above-entitled matter is ready for reading and signing. Please attend to this matter by
11	Subscribed and sworn to before me this	11 complying with ALL blanks checked below. 12 _XX_ arranging with us at (303)696-7680 to read and sign
12	day of , 2014.	the deposition in our office.
13	My commission expires:	OR (if applicable),
14		14 _XX_ have deponent read your copy; signing attached original
15		15 signature page and any amendments sheets.
	Notary Public	read enclosed deposition, sign attached signature page and any amendment sheets.
16		17 XX within 35 days of the date of this letter.
17		18
18	jb	Please be sure that the signature page and accompanying amendment sheets, if any, are signed before a notary public
19	City Select Auto Sales vs. BMW Bank of North America, et al.	and returned to our office at the above address.
20		If this matter has not been taken care of within said period
21 22		of time, the deposition will be filed unsigned pursuant to the Rules of Civil Procedure.
		22
23		
23 24		Thank you. 23 Enclosures:
23 24 25		Thank you.

	040	
	249	
1	PATTERSON REPORTING & VIDEO Highpoint	
2	2170 South Parker Road, Suite 263 Denver, Colorado 80231	
3		
4	March 27, 2014	
5	JONATHAN B. PIPER Bock & Hatch, LLC	
6	134 N. La Salle Street, Suite 1000 Chicago, Illinois 60602	
7	(312)658-5500	
	Re: City Select Auto vs. BMW Bank of North America	
8 9	Deposition of: Sean Ryan Dear Mr. Piper:	
10	Previously filed. Forwarding signature page and amendment sheet(s).	
11	Signed, no changes.	
12		
13	Signed, with changes, copy of which is enclosed.	
14	No signature required.	
15	Reading and signing not requested pursuant to CRCP Rule 30(e)	
16 17	Signature waived.	
18	page and/or amendments will be forwarded if received.	
	Original exhibits included in ongoing notebook and will	
19 20	be filed with counsel at conclusion of discovery. Enclosures: (As above noted)	
21	cc: William B. Hayes, Raymond A. Garcia	
22 23		
24 25		
1		



___BMW Bank of North America 44 0114

Attention All Independents!!

UpToDrive is looking for

your BUSINESS !!

- 110% of (KBB) Retail value
 - 2006 and newer vehicles
 - Up to 90,000 miles

Call us at 888-345-0918







BILL TO:

Credit Smarts Corporation Attn; Sean Ryan 231 East Alessandro Blvd Suite 488A Riverside, CA 92508

REMIT TO:

10465 PARK MEADOWS DRIVE SUITE 200 LONE TREE, CO 80124

TEL: (303) 299-9329 FAX: (303) 299-9309

Invoice

ACCOUNT NUMBER	DATE	INVOICE#
4041	12/30/2012	1157764

	Terms
	Net 30
QUANTITY	AMOUNT
10,402.0	\$416.08
	2-19-14 Exhibit J.
	8-19-14 Exhibit Je Ryan Patterson Reporting & Vi
	QUANTITY 10,402.0

Please Include your invoice number on your checks.

TOTAL

416.08



ISSUED TO:

Credit Smarts Corporation Attn: Sean Ryan 231 East Alessandro Blvd Suite 488A Riverside, CA 92508

Payment Receipt

ACCOUNT NUMBER	DATE	PAYMENT#
4041	12/31/2012	88965

ITEM DESCRIPTION	QUANTITY	AMOUNT
ayment CreditCard:	1	416.08

		3-17-14 Exhibit
		3-17-14 Exmon
		P
		Patterson Reporting &

Thank you for your business.

TOTAL

416.08

Thompson Jake, SF2-US-AP-4 </o=BMWCORP/ou=Americas Administration Group/

cn=Recipients/cn=ThompsJa>

Sent:

Wednesday, August 7, 2013 9:17 PM

To:

'sryan@creditsmarts.com'

Subject:

MSA

Sean,

Will you send me a copy of the MSA we have in place? It looks like our version is missing a page.

Thanks,

Jake.

up2drive

a division of BMW Bank of North America Jake Thompson

Online Business Manager 5550 Britton Parkway

Hilliard, OH. 43026

Phone: (614)-718-6995

Fax: (614)-453-3425

mailto: jthompson@up2drive.com

Url: http://www.up2drive.com

Ryan
Patterson Reporting & Video

Thompson Jake, SF2-US-AP-4 </o=BMWCORP/ou=Americas Administration Group/

cn=Recipients/cn=ThompsJa>

Sent:

Thursday, August 8, 2013 12:30 PM

To:

'sryan@creditsmarts.com'

Subject:

RE: MSA

Things are good, business is going well this year.

I do need to discuss a piece of fax marketing you guys are doing; do you have some time tomorrow?

Jake.

From: Sean Ryan [mailto:sryan@creditsmarts.com]
Sent: Wednesday, August 07, 2013 6:40 PM

To: Thompson Jake, SF2-US-AP-4

Subject: RE: MSA

I will grab it. How are things?

Sean Ryan CreditSmarts.com 888-345-0918 ext. 307 sryan@creditsmarts.com

NOTICE

This e-mail and any attachments contain information which may be confidential or privileged and exempt from disclosure under applicable law. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is without authorization and is prohibited. If you have received this e-mail in error, please immediately:

- 1) notify us by returning it to the sender and
- 2) delete this copy from your computer system.

From: Jake. Thompson@bmwfs.com [mailto: Jake. Thompson@bmwfs.com]

Sent: Wednesday, August 07, 2013 2:17 PM

To: sryan@creditsmarts.com

Subject: MSA

Sean,

Will you send me a copy of the MSA we have in place? It looks like our version is missing a page.

Thanks,

Jake.

up2drive

a division of BMW Bank of North America Jake Thompson Online Business Manager 5550 Britton Parkway Hilliard, OH. 43026 Phone: (614)-718-6995



Fax: (614)-453-3425 mailto:jthompson@up2drive.com Url: http://www.up2drive.com

No virus found in this message. Checked by AVG - www.avg.com

Version: 2013.0.3392 / Virus Database: 3209/6557 - Release Date: 08/06/13

From: Sean Ryan <sryan@creditsmarts.com>

Sent: Sunday, August 11, 2013 10:14 PM

To: Thompson Jake, SF2-US-AP-4 < Jake. Thompson@bmwfs.com>

Subject: call?

Do you have time in the morning? The employee who sent the email out to our registered dealer list forwarded the email to me. I was out of town and did not authorize this.

What time do you have available?

Sean Ryan CreditSmarts.com 888-345-0918 ext. 307 sryan@creditsmarts.com

NOTICE

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- 2) delete this copy from your computer system.



Thompson Jake, SF2-US-AP-4 </o=BMWCORP/ou=Americas Administration Group/

cn=Recipients/cn=ThompsJa>

Sent:

Monday, August 12, 2013 1:53 PM

To:

'sryan@creditsmarts.com'

Subject:

RE: call?

Today is pretty crazy, how about tomorrow morning 10:30am ET?

From: Sean Ryan [mailto:sryan@creditsmarts.com]

Sent: Sunday, August 11, 2013 6:14 PM **To:** Thompson Jake, SF2-US-AP-4

Subject: call?

Do you have time in the morning? The employee who sent the email out to our registered dealer list forwarded the email to me. I was out of town and did not authorize this.

What time do you have available?

Sean Ryan CreditSmarts.com 888-345-0918 ext. 307 sryan@creditsmarts.com

NOTICE

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- 2) delete this copy from your computer system.



Sean Ryan <sryan@creditsmarts.com>

Sent:

Monday, August 12, 2013 5:23 PM

To:

Thompson Jake, SF2-US-AP-4 < Jake. Thompson@bmwfs.com>

Subject:

RE: call?

Jake,

I now know what this is all about and am terribly upset. The sales person that did this has offered his resignation which as of today and I have refused.

A friend of mine referred me to a law office that has handled things like this before.

Alan S. Kaplinsky, Esq. Partner Ballard Spahr LLP 1735 Market St. 51st Floor Philadelphia, PA 19103-7599 Phone: 215-864-8544 Cell: 215-858-7810

kaplinsky@ballardspahr.com

Turns out they also represent BMW on other circumstances and he did not want to engage unless he had your acknowledgment.

Sean Ryan CreditSmarts.com 888-345-0918 ext. 307 srvan@creditsmarts.com

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- 2) delete this copy from your computer system.

From: Jake.Thompson@bmwfs.com [mailto:Jake.Thompson@bmwfs.com]

Sent: Monday, August 12, 2013 6:53 AM

To: sryan@creditsmarts.com

Subject: RE: call?

Today is pretty crazy, how about tomorrow morning 10:30am ET?

From: Sean Ryan [mailto:sryan@creditsmarts.com]

Sent: Sunday, August 11, 2013 6:14 PM **To:** Thompson Jake, SF2-US-AP-4

Subject: call?

Do you have time in the morning? The employee who sent the email out to our registered dealer list forwarded the email to me. I was out of town and did not authorize this.

What time do you have available?



Sean Ryan CreditSmarts.com 888-345-0918 ext. 307 sryan@creditsmarts.com

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No virus found in this message. Checked by AVG - www.avg.com

Version: 2013.0.3392 / Virus Database: 3211/6570 - Release Date: 08/11/13

From: Sean Ryan <sryan@creditsmarts.com>

Sent: Wednesday, August 28, 2013 6:07 AM

To: Thompson Jake, SF2-US-AP-4 < Jake. Thompson@bmwfs.com>

Subject: legal contact

Do you have a contact in your legal department? My firm is going to make this thing go away and needs a contact at Up2drive. Did you find the hard copy of the agreement?

Sean Ryan CreditSmarts.com 888-345-0918 ext. 307 sryan@creditsmarts.com

NOTICE

- 1) notify us by returning it to the sender and
- 2) delete this copy from your computer system.



Thompson Jake, SF2-US-AP-4 </O=BMWCORP/OU=AMERICAS ADMINISTRATION GROUP/

CN=RECIPIENTS/CN=THOMPSJA>

Sent:

Wednesday, August 28, 2013 5:42 PM

To:

sryan@creditsmarts.com

Subject:

RE: legal contact

The contact is Joe Pitstick

Joe.pitstick@bmwfs.com

614-210-8542

Pawan had a copy, so we are good.

Thanks,

Jake.

From: Sean Ryan [mailto:sryan@creditsmarts.com] Sent: Wednesday, August 28, 2013 2:07 AM

To: Thompson Jake, SF2-US-AP-4

Subject: legal contact

Do you have a contact in your legal department? My firm is going to make this thing go away and needs a contact at Up2drive. Did you find the hard copy of the agreement?

Sean Ryan CreditSmarts.com 888-345-0918 ext. 307 sryan@creditsmarts.com

NOTICE

- 1) notify us by returning it to the sender and
- 2) delete this copy from your computer system.



From: Thompson Jake, SF2-US-AP-4 </o=BMWCORP/ou=Americas Administration Group/

cn=Recipients/cn=ThompsJa>

Sent: Thursday, December 6, 2012 4:32 PM

To: sryan@creditsmarts.com

Subject: Have not touched base in a while

Sean,

Let me know if you have some time next week to touch base on the program. I've accrued for the money we owe you for funded loans, and I'd like to hear from you on any changes or enhancements we need to make to keep growing the number of applications.

Thanks,

Jake.

up2drive

a division of BMW Bank of North America

Jake Thompson Online Business Manager 5550 Britton Parkway Hilliard, OH. 43026

Phone: (614)-718-6995 Fax: (614)-453-3425

mailto: ithompson@up2drive.com Url: http://www.up2drive.com

RYAN
Patterson Reporting & Video

From:

Sean Ryan <sryan@creditsmarts.com>

Sent:

Friday, September 21, 2012 6:08 PM

To:

Thompson Jake, SF2-US-AP-4 < Jake. Thompson@bmwfs.com>

Subject:

RE: Quick chat on joint apps

When do you have time? I just got back from Kentucky. Am open today and all next week at your convenience. We are trying to figure out how we can promote the Up2drive product by encouraging the email address to be completed on the apps at a great level.

Sean Ryan CreditSmarts.com 888-345-0918 ext. 307 sryan@creditsmarts.com

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- 2) delete this copy from your computer system.

From: Jake.Thompson@bmwfs.com [mailto:Jake.Thompson@bmwfs.com]

Sent: Tuesday, September 18, 2012 1:38 PM

To: sryan@creditsmarts.com; Jamie.Peters@bmwfs.com

Subject: RE: Quick chat on joint apps

Sean,

I'm looking at some application & booking data, and it looks like we owe you some money. I show 12 booked deals to-date, and your approval to book percentage is already the highest of any of our current partners. Very pleased with the results thus far.

Also, where did we leave off with the joint application issue?

Thanks, Jake.

From:sryan@creditsmarts.com [mailto:sryan@creditsmarts.com]

Sent: Tuesday, July 24, 2012 3:27 PM

To: Thompson Jake, SF2-US-AP-41; Peters James, SF-I-140

Subject: Re: Quick chat on joint apps

Jake,

I will be in flight. Can we connect on Thursday?

Sean Ryan CreditSmarts 888-345-0918 sryan@CreditSmarts.com

---- Reply message ----

From: "Jake. Thompson(a) bmwfs.com>



Date: Tue, Jul 24, 2012 2:59 pm Subject: Quick chat on joint apps

To: < Jamie.Peters@bmwfs.com >, < sryan@creditsmarts.com >

BEGIN: VCALENDAR METHOD: REQUEST

PRODID: Microsoft Exchange Server 2007

VERSION:2.0

BEGIN:VTIMEZONE

TZID:W. Europe Standard Time

BEGIN:STANDARD

DTSTART:16010101T030000

TZOFFSETFROM:+0200

TZOFFSETTO:+0100

RRULE:FREQ=YEARLY;INTERVAL=1;BYDAY=-1SU;BYMONTH=10

END:STANDARD

BEGIN:DAYLIGHT

DTSTART:16010101T020000

TZOFFSETFROM:+0100

TZOFFSETTO:+0200

RRULE:FREO=YEARLY:INTERVAL=1:BYDAY=-1SU:BYMONTH=3

END:DAYLIGHT

END:VTIMEZONE

BEGIN: VEVENT

ORGANIZER:MAILTO:Jake.Thompson@bmwfs.com

ATTENDEE; ROLE=REQ-PARTICIPANT; PARTSTAT=NEEDS-ACTION; RSVP=TRUE: MAILTO: Jamie.

Peters@bmwfs.com

ATTENDEE; ROLE=REQ-PARTICIPANT; PARTSTAT=NEEDS-ACTION; RSVP=TRUE: MAILTO: sryan@

creditsmarts.com

DESCRIPTION; LANGUAGE=en-US: When: Wednesday\, July 25\, 2012 1:30 PM-2:00 PM

(GMT-05:00) Eastern Time (US & Canada).\nWhere: Jamie's place\n\nNote: Th

e GMT offset above does not reflect daylight saving time adjustments.\n\n*

~*~*~*~*~*~*~*\n\n\n\n

SUMMARY; LANGUAGE=en-US: Quick chat on joint apps

DTSTART; TZID=W. Europe Standard Time: 20120725T193000

DTEND;TZID=W. Europe Standard Time:20120725T200000

01000000034F9FF8C39D63144BD6D8E31653F1876

CLASS:PUBLIC

PRIORITY:5

DTSTAMP:20120724T185950Z

TRANSP:OPAQUE

STATUS: CONFIRMED

SEQUENCE:0

LOCATION; LANGUAGE=en-US: Jamie's place

X-MICROSOFT-CDO-APPT-SEQUENCE:0

X-MICROSOFT-CDO-OWNERAPPTID:2088269788

X-MICROSOFT-CDO-BUSYSTATUS:TENTATIVE

X-MICROSOFT-CDO-INTENDEDSTATUS:BUSY

X-MICROSOFT-CDO-ALLDAYEVENT:FALSE

X-MICROSOFT-CDO-IMPORTANCE:1

X-MICROSOFT-CDO-INSTTYPE:0

BEGIN: VALARM

ACTION: DISPLAY

DESCRIPTION: REMINDER

TRIGGER; RELATED=START:-PT15M

END:VALARM END:VEVENT END:VCALENDAR

No virus found in this message. Checked by AVG - www.avg.com

Version: 2012.0.2221 / Virus Database: 2437/5275 - Release Date: 09/18/12

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	CreditSmarts is on Facebook. To connect with CreditSmarts, sign up for Facebook today. Sign Up Log In				
CreditSmarts 4 likes					
Internet/Software Becoming a member of the CreditSmarts network of Lenders and Dealers means bringing the best loan programs to your customers.	s that you are committed to				
About	Photos Likes				
Highlights					
CreditSmarts April 16	CreditSmarts December 17, 2012				
New Rate and Program Release! http://p0.vresp.com/spnI7V #vr4smallbiz	New Lenders available on CreditSmarts http://p0.vresp.com/reIGeK #vr4smallbiz				
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CreditSmarts October 18, 2012	CreditSmarts October 5, 2012				

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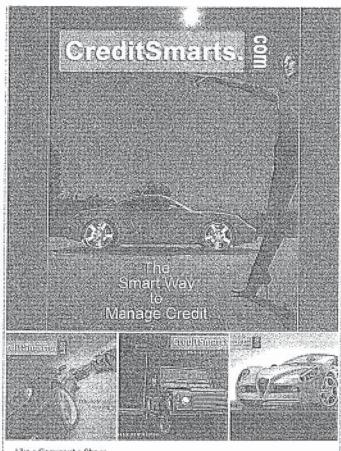
Up2Drive http://p0.vresp.com/gp4FwE #vr4smallbiz

Like · Conment



Untitled Album (8 photos)





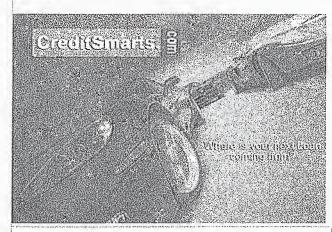
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Follow the instructions on the loan packet, give the completed **drive check**® to the dealership to complete the purchase!



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UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY – CAMDEN VICINAGE

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CITY SELECT AUTO SALES, INC., a new Jersey corporation, individually and as the representative of a class of similarly situated persons,

Plaintiff.

VS.

BMW BANK OF NORTH AMERICA, INC., BMW FINANCIAL SERVICES NA, LLC, CREDITSMARTS CORP., and JOHN DOES 1-12,

Defendants.

Civil Action No. 13-cv-04595-NLH-JS

Assigned to the Hon. Noel L. Hillman

Referred to Magistrate Judge Joel Schneider

DEFENDANTS BMW BANK OF NORTH AMERICA, INC., AND BMW FINANCIAL SERVICES NA, LLC'S RESPONSES TO PLAINTIFF'S FIRST AND SECOND SETS OF INTERROGATORIES

Pursuant to Federal Rule of Civil Procedure 33, defendants BMW Bank of North America, Inc., and BMW Financial Services NA's (together, the "BMW Defendants") hereby respond to the First and Second Set of Interrogatories (the "Interrogatories") propounded by plaintiff City Select Auto Sales, Inc. ("Plaintiff") as follows:

PRELIMINARY STATEMENT

The BMW Defendants respond to the Interrogatories based upon the investigation conducted in the time available since service of the Interrogatories. As of the date of these Responses, the BMW Defendants have had an insufficient opportunity to review all documents, interview all personnel and otherwise obtain information that may prove relevant in this case, including, without limitation, through discovery of Plaintiffs and/or third parties. As a consequence, the BMW Defendants' Responses are based upon information now known to the BMW Defendants and that the BMW Defendants believe to be relevant to the subject matter covered by the Interrogatories. In the future, the BMW Defendants may discover or acquire additional information, or may discover documents currently in its possession, bearing upon the Interrogatories and the BMW Defendants' Responses thereto. Accordingly, the BMW Defendants reserve the right: (1) to make subsequent revisions, supplementation or amendment to these Responses based upon any information, evidence, documents, facts and things that hereafter may

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be discovered, or the relevance of which may hereafter be discovered; and (2) to produce, introduce or rely upon additional or subsequently acquired or discovered writings, evidence and information at trial or in any pretrial proceedings held herein. The BMW Defendants incorporate this Preliminary Statement into each Response as if fully set forth therein.

GENERAL OBJECTIONS

- 1. The BMW Defendants object to the Interrogatories to the extent that they seek to impose burdens on the BMW Defendants that are inconsistent with, or in addition to, the BMW Defendants' discovery obligations pursuant to the Federal Rules of Civil Procedure and/or the Local Rules of this Court.
- The BMW Defendants object to the Interrogatories to the extent that they are vague 2. and ambiguous.
- The BMW Defendants object to the Interrogatories to the extent that they are 3. overbroad, unduly burdensome and harassing.
- 4. The BMW Defendants object to the Interrogatories to the extent that they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action.
- 5. The BMW Defendants object to the Interrogatories to the extent that they are not limited to a time period relevant or even proximate to the events at issue in this action.
- The BMW Defendants object to the Interrogatories to the extent that they seek 6. information that is protected from disclosure by the attorney-client privilege, the attorney workproduct doctrine, applicable regulatory privileges or any other privilege or immunity.
- The BMW Defendants object to the Interrogatories to the extent that they seek 7. confidential, proprietary business information that belongs to the BMW Defendants. All confidential, proprietary business information produced by the BMW Defendants will be subject to the Discovery Confidentiality Order entered by the Court.
- 8. The BMW Defendants will not provide such information without the execution by the parties, and entry by the Court, of an appropriate Stipulation re Confidentiality Agreement and Protective Order.

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- 9. The BMW Defendants object to the Interrogatories to the extent that they seek information in which non-parties have a legitimate expectation and/or right of privacy pursuant to constitutional, statutory or case law.
- 10. The BMW Defendants object to the Interrogatories to the extent that they seek information that is not within the knowledge, custody or control of the BMW Defendants.
- 11. The BMW Defendants object to the Interrogatories to the extent that they are impermissibly compound and seek to impermissibly avoid the limitation on interrogatories set by the Court in this action.
- 12. The BMW Defendants object to the definition of the term "identify" on the grounds that it seeks information in which non-parties have a legitimate expectation or right of privacy.
- 13. Any documents produced by the BMW Defendants in response to the Interrogatories are subject to all objections as to competence, relevance, materiality and admissibility, as well as to any other objections on any grounds that would require the exclusion of the information or any portion thereof if such information were offered into evidence, and the BMW Defendants expressly reserve all such objections and grounds.
- 14. The BMW Defendants incorporate these General Objections into each Response herein as if fully set forth.

SPECIFIC RESPONSES

INTERROGATORY NO. 1:

Identify each person involved in answering these Interrogatories, including persons who you consulted or who provided information you relied on in answering any Interrogatory, and state the information supplied by each such person.

RESPONSE TO INTERROGATORY NO. 1:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; and (iv) it seeks information that is protected from disclosure by the attorney-client privilege and/or the attorney work-product doctrine. Without waiving, and subject to these and the

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General Objections, the BMW Defendants respond to this Interrogatory as follows: Jake Thompson c/o Stroock & Stroock & Lavan LLP.

INTERROGATORY NO. 2:

State whether any of the BMW Defendants, or any other entity acting on their behalf, has utilized facsimile transmissions delivered by telephone that advertised any property, goods, or services of the BMW Defendants; and describe in detail the content of each different document sent by such transmissions and the time period during which each different document was sent.

RESPONSE TO INTERROGATORY NO. 2:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; (iv) it seeks confidential, proprietary business information that belongs to the BMW Defendants and for third parties; (v) it is not limited to a time period relevant or even proximate to the events at issue in this action; (vi) it is compound; and (vii) discovery is ongoing. Without waiving, and subject to these and the General Objections, the BMW Defendants respond to this Interrogatory as follows: The BMW Defendants have not transmitted any facsimile advertisements, nor authorized the transmission of any facsimile advertisements on their behalf, within the applicable four year statute of limitations.

INTERROGATORY NO. 3:

State whether any of the BMW Defendants, or any other entity acting on their behalf, has utilized facsimile transmissions delivered by telephone that advertised "up2drive"; and describe in detail the content of each different document sent by such transmissions and the time period during which each different document was sent.

RESPONSE TO INTERROGATORY NO. 3:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information

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New York, NY 10038-4982

that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; (iv) it seeks confidential, proprietary business information that belongs to the BMW Defendants and /or third parties; (v) it is not limited to a time period relevant or even proximate to the events at issue in this action; (vi) it is compound; and (vii) discovery is ongoing. Without waiving, and subject to these and the General Objections, the BMW Defendants respond to this Interrogatory as follows: The BMW Defendants have not transmitted any facsimile advertisements, nor authorized the transmission of any facsimile advertisements on their behalf, within the applicable four year statute of limitations.

INTERROGATORY NO. 4:

State whether any facsimile transmissions referred to in response to Interrogatories 2 and/or 3 were sent to Plaintiff and state the dates such transmissions were sent.

RESPONSE TO INTERROGATORY NO. 4:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; (iv) it seeks confidential, proprietary business information that belongs to the BMW Defendants and /or third parties; (v) it is not limited to a time period relevant or even proximate to the events at issue in this action; and (vi) discovery is ongoing. Without waiving, and subject to these and the General Objections, the BMW Defendants respond to this Interrogatory as follows: The BMW Defendants have not transmitted any facsimile advertisements, nor authorized the transmission of any facsimile advertisements on their behalf, within the applicable four year statute of limitations.

INTERROGATORY NO. 5:

Identify each person who has knowledge and/or was in any way involved in the facsimile transmissions(s) referred to in response to Interrogatories 2 and/or 3, and identify the telephone number(s) of the telephone line(s) used by the sending device; the telephone service provider for

New York, NY 10038-4982 80 Maiden Lane

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the telephone number(s), stating the name, address, and account number of Defendant or person acting on Defendant's behalf with that provider; state the address where the sending device was located at the time each call was made; the make, model, manufacturer, and serial number of the sending device; the owner of the sending device; and the owner's telephone number.

RESPONSE TO INTERROGATORY NO. 5:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; (iv) it seeks confidential, proprietary business information that belongs to the BMW Defendants and for third parties; (v) it is not limited to a time period relevant or even proximate to the events at issue in this action; (vi) it seeks information in which non-parties have a legitimate expectation or right of privacy; (vii) it is compound; and (viii) discovery is ongoing. Without waiving, and subject to these and the General Objections, the BMW Defendants respond to this Interrogatory as follows: The BMW Defendants have not transmitted any facsimile advertisements, nor authorized the transmission of any facsimile advertisements on their behalf, within the applicable four year statute of limitations.

INTERROGATORY NO. 6:

Identify each person from whom any of the BMW Defendants claim to have received prior express invitation or permission to send to Plaintiff the facsimile advertisements in response to Interrogatories 2 and 3, all facts supporting the existence of such prior express invitation or permission, and the date(s) that such consent was given.

RESPONSE TO INTERROGATORY NO. 6:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; (iv) it seeks confidential, proprietary business information that belongs to the BMW Defendants and /or third parties; (v) it seeks information that is protected from disclosure by the

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attorney-client privilege and/or the attorney work-product doctrine; (vi) it is not limited to a time period relevant or even proximate to the events at issue in this action; (vii) it seeks information in which non-parties have a legitimate expectation or right of privacy; (viii) it is compound; and (ix) discovery is ongoing. Without waiving, and subject to these and the General Objections, the BMW Defendants respond to this Interrogatory as follows: The BMW Defendants have not transmitted any facsimile advertisements, nor authorized the transmission of any facsimile advertisements on their behalf, within the applicable four year statute of limitations.

INTERROGATORY NO. 7:

Identify each person involved in the creation of an established business relationship (EBR) between any BMW Defendant and Plaintiff, all facts supporting the existence of such an EBR, the date(s) on which such EBR was formed, and each person involved in maintaining a log or other record of such EBR.

RESPONSE TO INTERROGATORY NO. 7:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; (iv) it seeks confidential, proprietary business information that belongs to the BMW Defendants and for third parties; (v) it is not limited to a time period relevant or even proximate to the events at issue in this action; (vi) it is compound; and (vii) discovery is ongoing. Without waiving, and subject to these and the General Objections, the BMW Defendants respond to this Interrogatory as follows: The BMW Defendants do not have, and have not had, any relationship with Plaintiff.

INTERROGATORY NO. 8:

Identify each person who has knowledge and/or was in any way involved in the facsimile transmission(s) of Exhibit A to the Complaint herein.

New York, NY 10038-4982

RESPONSE TO INTERROGATORY NO. 8:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is protected from disclosure by the attorney-client privilege and/or the attorney work-product doctrine; (iv) it seeks information in which non-parties have a legitimate expectation or right of privacy; and (v) discovery is ongoing. Without waiving, and subject to these and the General Objections, the BMW Defendants respond to this Interrogatory as follows: The BMW Defendants were in no way involved with, or had knowledge of, the transmission of the facsimile attached as Exhibit A to the Complaint. However, based on an informal exchange of documents in this action, the BMW Defendants believe that Barry Clark and Sean Ryan are individuals that have knowledge of, or were involved, in the facsimile transmission of Exhibit A.

INTERROGATORY NO. 9:

Identify each and every contract, agreement or understanding between Creditsmarts and any of the BMW Defendants, and state the effective dates of such contract, agreement or understanding (including the current status).

RESPONSE TO INTERROGATORY NO. 9:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; (iv) it seeks confidential, proprietary business information that belongs to the BMW Defendants and /or third parties; (v) it is not limited to a time period relevant or even proximate to the events at issue in this action; and (vi) discovery is ongoing. Without waiving, and subject to these and the General Objections, the BMW Defendants respond to this Interrogatory as follows: The Master Professional Services Agreement dated March 29, 2012; the Up2Drive/Vendor Marketing Agreement dated April 6, 2012. Both of these contracts are still in effect as of the date of these responses.

New York, NY 10038-4982

INTERROGATORY NO. 10:

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Identify every person having knowledge of the solicitation, negotiation, drafting, execution, and performance of each contract, agreement or understanding between the BMW Defendants and Creditsmarts.

RESPONSE TO INTERROGATORY NO. 10:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; (iv) it seeks confidential, proprietary business information that belongs to the BMW Defendants and /or third parties; (v) it seeks information that is protected from disclosure by the attorney-client privilege and/or the attorney work-product doctrine; (vi) it is not limited to a time period relevant or even proximate to the events at issue in this action; and (vii) discovery is ongoing. Without waiving, and subject to these and the General Objections, the BMW Defendants respond to this Interrogatory as follows: Jake Thompson and Pawan Murthy.

INTERROGATORY NO. 11:

For each month during which any contract, agreement or understanding between Creditsmarts and any of the BMW Defendants has been in effect, identify the number of loan applications submitted through Creditsmarts to the BMW Defendants pursuant to such contact, agreement or understanding.

RESPONSE TO INTERROGATORY NO. 11:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; (iv) it seeks confidential, proprietary business information that belongs to the BMW Defendants and /or third parties; (v) it is not limited to a time period relevant or even proximate to the events at issue in this action; and (vi) discovery is ongoing. Without waiving, and subject to these and the General Objections, the BMW Defendants respond to this Interrogatory as follows:

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Month	Applications Submitted Through Creditsmarts
June 2012	16
July 2012	41
August 2012	59
September 2012	45
October 2012	33
November 2012	23
December 2012	28
January 2013	34
February 2013	38
March 2013	37
April 2013	34
May 2013	28
June 2013	15
July 2013	37
August 2013	48
September 2013	11
December 2013	6

INTERROGATORY NO. 12:

Provide a general description of any category of proprietary or confidential information provided by the BMW Defendants to Creditsmarts in connection with any business dealings between them.

RESPONSE TO INTERROGATORY NO. 12:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information

New York, NY 10038-4982

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that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; (iv) it seeks confidential, proprietary business information that belongs to the BMW Defendants and /or third parties; (v) it is not limited to a time period relevant or even proximate to the events at issue in this action; and (vi) discovery is ongoing.

INTERROGATORY NO. 13:

What advertisements, to the BMW Defendants' knowledge, did Creditsmarts use to promote its relationship with, or goods or services of, the BMW Defendants? Identify the form of advertisement, how it was used (e.g., fax, publication, television or radio, internet), when the BMW Defendants first became aware of such advertisement, and what action(s) BMW the BMW Defendants took with regard to such advertisement.

RESPONSE TO INTERROGATORY NO. 13:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; (iv) it seeks confidential, proprietary business information that belongs to the BMW Defendants and /or third parties; (v) it is not limited to a time period relevant or even proximate to the events at issue in this action; (vi) it is compound; and (vii) discovery is ongoing. Without waiving, and subject to these and the General Objections, the BMW Defendants respond to this Interrogatory as follows: Creditsmarts was not authorized to advertise the BMW Defendants' services and, to the BMW Defendants' knowledge, did not advertise the BMW Defendants' services.

INTERROGATORY NO. 14:

Identify any goods or services of the BMW Defendants that were advertised in Exhibit A to the Complaint.

RESPONSE TO INTERROGATORY NO. 14:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; and (iii) discovery is ongoing. Without waiving, and subject to these and the General Objections, the BMW Defendants respond to this Interrogatory as follows: Exhibit A speaks for itself.

INTERROGATORY NO. 15:

Identify any of the BMW Defendants' names, trademarks, service marks, or the terms of any contract involving the BMW Defendants and Creditsmarts, that are used or referred to in Exhibit A to the Complaint.

RESPONSE TO INTERROGATORY NO. 15:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; and (iv) discovery is ongoing. Without waiving, and subject to these and the General Objections, the BMW Defendants respond to this Interrogatory as follows: Exhibit A speaks for itself.

INTERROGATORY NO. 16:

Identify every person who has contacted Defendant to communicate a desire not to receive facsimile transmissions.

RESPONSE TO INTERROGATORY NO. 16:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; (iv) it seeks confidential, proprietary business information that belongs to the BMW Defendants and /or third parties; (v) it is not limited to a time period relevant or even proximate to

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the events at issue in this action; (vi) it seeks information in which non-parties have a legitimate expectation or right of privacy; and (vii) discovery is ongoing.

INTERROGATORY NO. 17:

Identify each person who was involved in handling or responding to removal or opt-out request(s) for any advertisement.

RESPONSE TO INTERROGATORY NO. 17:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; (iv) it seeks confidential, proprietary business information that belongs to the BMW Defendants and /or third parties; (v) it seeks information that is protected from disclosure by the attorney-client privilege and/or the attorney work-product doctrine; (vi) it is not limited to a time period relevant or even proximate to the events at issue in this action; and (vii) discovery is ongoing.

INTERROGATORY NO. 18:

Identify each TCPA lawsuit filed against you, and for each lawsuit, provide the date the suit was filed, county and state or federal district where the suit was filed, and the case number.

RESPONSE TO INTERROGATORY NO. 18:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; (iv) it is not limited to a time period relevant or even proximate to the events at issue in this action; (v) it is compound; and (vi) discovery is ongoing.

New York, NY 10038-4982

INTERROGATORY NO. 19:

Identify each fact witness whom you may call as a witness and state in detail the subject matter of each witness' testimony.

RESPONSE TO INTERROGATORY NO. 19:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is protected from disclosure by the attorney-client privilege and/or the attorney work-product doctrine; (iv) it is premature; and (v) discovery is ongoing. Without waiving, and subject to these and the General Objections, the BMW Defendants respond to this Interrogatory as follows: Jake Thompson regarding the relationship between Creditsmarts and the BMW Defendants; Pawan Murthy regarding the negotiation of the contracts between Creditsmarts and the BMW Defendants. The BMW Defendants reserve their right to identify additional witnesses as discovery progresses.

INTERROGATORY NO. 20:

Identify each opinion witness whom you may call as a witness and state in detail the opinion each witness will provide at trial.

RESPONSE TO INTERROGATORY NO. 20:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is protected from disclosure by the attorney-client privilege and/or the attorney work-product doctrine; (iv) it is premature; and (v) discovery is ongoing.

INTERROGATORY NO. 21:

Identify any and all means (including outside services) that the BMW Defendants used from 2011 to the filing of the present lawsuit to be aware of use and/or protect against unauthorized use by other entities on internet websites of BMW intellectual property, names, trade or service marks, including "up2drive", and if the BMW Defendants were aware of any such use by Creditsmarts during that time period state what the BMW Defendants were aware of, how and when they gained such awareness.

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New York, NY 10038-4982

RESPONSE TO INTERROGATORY NO. 21:

The BMW Defendants object to this Interrogatory on the grounds, among others, that: (i) it is vague and ambiguous; (ii) it is overly broad, burdensome and harassing; (iii) it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this action; (iv) it seeks confidential, proprietary business information that belongs to the BMW Defendants and /or third parties; (v) it seeks information in which non-parties have a legitimate expectation or right of privacy; (vi) it is compound; and (vii) discovery is ongoing.

Dated: February 26, 2014

By: Durmed Saur J.N

R'aymond A. Garcia (pro hac vice) STROOCK & STROOCK & LAVAN LLP

rgarcia@stroock.com 180 Maiden Lane

New York, NY 10038 Telephone: (212) 806-5400 Facsimile: (212) 806-6006

Attorneys for Defendants

BMW BANK OF NORTH AMERICA and BMW FINANCIAL SERVICES NA, LLC

STROOCK & STROOCK & LAVAN LLP 180 Maiden Lane

New York, NY 10038-4982

б

VERIFICATION

I, Jake Thompson, declare as follows:

I am authorized to make this Verification on behalf of defendants BMW Bank of North America, Inc. and BMW Financial Services NA, LLC (together, the "BMW Defendants"). I have read the foregoing Responses to Plaintiff's First and Second Sets of Interrogatories (the "Responses"). I am informed and believe, including based on a review of the records maintained by the BMW Defendants, that the facts set forth in the Responses are true.

I declare under penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct.

Executed this 26 day of February 2014.

Jake Thompson

STROOCK & STROOCK & LAVAN LLP 180 Maiden Lanc

New York, NY 10038-4982

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY- CAMDEN VICINAGE

CITY SELECT AUTO SALES, INC., a new Jersey corporation, individually and as the representative of a class of similarly situated persons,

Plaintiff,

Defendants.

VS.

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BMW BANK OF NORTH AMERICA, INC., BMW FINANCIAL SERVICES NA, LLC, CREDITSMARTS CORP., and JOHN DOES 1-12,

Case No. 13-cv-04595-NLH-JS

Assigned to the Hon. Noel L. Hillman

Referred to Magistrate Judge Joel Schneider

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Responses to Plaintiff's First and Second Sets of Interrogatories was served via mail on all attorneys of record on February 26,

2014, as follows:

Alan C. Milstein, Esq.
Sherman, Silverstein, Kohl, Rose & Podolsky PC
Eastgate Corporation Center
308 Harper Drive, Suite 200
Moorestown, NJ 08057
Attorneys for Plaintiff City Select Auto Sales, Inc.

Robert A. Smith
Smith & Doran, PC
60 Washington Street
Morristown, NJ 07960
Attorneys for Defendant Creditsmarts Corporation

Thomas J. Gaynor Smith & Doran, P.C. 60 Washington Street Morristown, NJ 07960 Attorneys for Defendant Creditsmarts Corporation

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	1 2	Dated: February 26, 2014	By: Raymond A. Garcia (pro hac vice)
	3		STROOCK & STROOCK & LAVAN LLP
	4		rgarcia@stroock.com 180 Maiden Lane
	5		New York, NY 10038 Telephone: (212) 806-5400
	6		Facsimile: (212) 806-6006
	7		Attorneys for Defendants
	8		BMW BANK OF NORTH AMERICA and
	9		BMW FINANCIAL SERVICES NA, LLC
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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY - CAMDEN VICINAGE

New Jersey corporation, individually and)
as the representative of a class of similarly situated persons,) Case No. 13-cv-04595-NLH-JS
Plaintiff,) Hon. Noel L. Hillman, J.
v.) Hon. Joel Schneider, Mag. J.
BMW BANK OF NORTH AMERICA, INC., BMW FINANCIAL SERVICES NA, LLC, CREDITSMARTS CORP., and JOHN DOES 1-12,	 PLAINTIFF'S SECOND SET OF REQUESTS FOR PRODUCTION TO DEFENDANT CREDITSMARTS
Defendants.)))

Plaintiff, City Select Auto Sales, Inc. ("Plaintiff"), in accordance with Fed. R. Civ. P. 34, hereby requests that defendant Creditsmarts Corp. ("Creditsmarts"), produce the following documents for inspection and copying at the offices of the undersigned within 30 days from the date of service hereof. These discovery requests are deemed continuing to the full extent authorized by the Federal Rules of Civil Procedure. Please follow the Definitions and Instructions contained in Plaintiff's first set of interrogatories.

GENERAL OBJECTIONS

Creditsmarks incorporates herein in their entirety the General Objections set forth in Creditsmarts Responses to Plaintiff's First Set of Requests for Production as if fully set forth herein.

DOCUMENTS REQUESTED



39. All webpages on websites operated by or on behalf of Creditsmarts, including any pages for which login access is required, including without limitation any pages that advertised access to the BMW Defendants.

RESPONSE: Creditsmarts has two (2) websites. The pages for the websites are attached. The websites do not advertise access to the BMW Defendants.

40. Any web portals, interface or software made available by Creditsmarts to members of the CreditSmarts network of lenders and dealers, including without limitation any pages or windows that refer to the BMW Defendants.

RESPONSE: None.

Respectfully submitted,

By: /s/ Robert A. Smith

Robert A. Smith SMITH & DORAN, PC 60 Washington Street, Suite 302 Morristown, New Jersey 07960 Telephone: (973) 292-0016 Telecopier: (973) 292-9168

Attorney for Defendant CREDITSMARTS CORP.

CERTIFICATE OF SERVICE

I hereby certify that on February f, 2014, I caused a true and correct copy of Creditsmarts Responses to Plaintiff's Second Set of Requests for Production to be served upon all counsel of record in this case in accordance with the Federal Rules of Civil Procedure and the District of New Jersey's Local Rules on Electronic Service:

Alan C. Milstein, Esq.
SHERMAN, SILVERSTEIN
KOHL, ROSE & PODOLSKY, P.A.
East Gate Corporate Center
308 Harper Drive, Suite 200
Moorestown, New Jersey 08057
Telephone: (856) 662-0700
amilstein@shermansilverstein.com

Phillip A. Bock, Esq. Jonathan B. Piper, Esq. BOCK & HATCH, LLC 134 North La Salle Street, Suite 1000 Chicago, Illinois 60602 Telephone: (312) 658-5500

Brian J. Wanca, Esq. ANDERSON + WANCA 3701 Algonquin Road, Suite 760 Rolling Meadows, Illinois 60008 Telephone: (847) 368-1500

Attorneys for Plaintiff

Ryan L. Di Clemente, Esq. Saul Ewing LLP 750 College Road East, Suite 100 Princeton, New Jersey 08540 Telephone: 609 452-5057 rdiclemente@saul.com

Attorney for BMW Bank of North America, Inc.

I certify that the foregoing statements made by me are true. I am aware that if any such statements are willfully false, I am subject to punishment.

Dated: February 14, 2014

/s/ Robert A. Smith
Attorney for Creditsmarts Corp.



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Email: info@cityselectauto.com

MAIN OFFICE:

Sales & Administrative Services 4375 Route 130 South Burlington, NJ 08016 Phone: (609) 877-6005 or (808) 228-CITY (2489) Fax: (609) 877-9592

Sales Office & Recon Center 2541 Mt. Ephraim Avenue Camden, NJ 08104 Phone: (856) 962-7770 or (890) 858-CITY (2489)

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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY - CAMDEN VICINAGE

CITY SELECT AUTO SALES, INC., a New Jersey corporation, individually and as the representative of a class of similarly	
situated persons,) Case No. 13-cv-04595-NLH-JS
Plaintiff,	Hon. Noel L. Hillman, J.
v.) Hon. Joel Schneider, Mag. J.
BMW BANK OF NORTH AMERICA,) PLAINTIFFS FIRST SET OF
INC., BMW FINANCIAL SERVICES NA,) REQUESTS FOR PRODUCTION
LLC, CREDITSMARTS CORP., and) TO DEFENDANT
JOHN DOES 1-12,) CREDITSMARTS
Defendants.))

Plaintiff, City Select Auto Sales, Inc. ("Plaintiff"), in accordance with Fed. R. Civ. P. 34, hereby requests that defendant Creditsmarts Corp. ("Creditsmarts"), produce the following documents for inspection and copying at the offices of the undersigned within 30 days from the date of service hereof. These discovery requests are deemed continuing to the full extent authorized by the Federal Rules of Civil Procedure. Please follow the Definitions and Instructions contained in Plaintiff's first set of interrogatories.

GENERAL OBJECTIONS

1. To the extent Defendant produces documents in response to any of the Document Requests, it does so without conceding the materiality, admissibility or relevance of any such document, or of any other substantive responses to the Plaintiff's Requests.

- 2. Defendant objects to all definitions, instructions, and Document Requests to the extent that they purport to impose obligations beyond those required or permitted by the Fed. R. Civ. P. 34 and Local New Jersey Civil Rules.
- 3. Defendant objects to these Document Requests to the extent that they purport to require identification and disclosure of documents and information that were prepared in anticipation of litigation, constitute attorney work product, reveal privileged attorney client communications, or are otherwise protected from disclosure under applicable privileges, laws or rules. Defendant hereby claims such privileges and protections to the extent implicated by each Document Request, and exclude privileged and protected information from its responses to the Document Requests. Any disclosure of such protected or privileged information is inadvertent, and is not intended to waive those privileges and protections.
- 4. Defendant objects to each of the Document Requests to the extent it purports to seek information or documents not presently in the possession, custody or control of Defendant, but in the possession of third parties or separate legal entities.
- 5. Defendant objects to these Document Requests to the extent that they assume the truth of any matters in dispute.
- 6. Defendant objects to these Document Requests to the extent that they seek documents not relevant to the claims or defenses of any party to the action and to the extent that they seek documents not reasonably calculated to lead to the discovery of admissible evidence.

- 7. Defendant's objections and responses to the Document Requests are based on information now known to Defendant. Defendant has not yet completed its discovery of the facts of this lawsuit nor prepared for trial and therefore reserves the right to amend, modify, or supplement its objections and responses if it learns of new information.
- 8. All responses stated below incorporate the above stated objections and are provided subject to and without waiving any of the objections stated above. The fact that Defendant chooses not to repeat each of the foregoing objections for each specific Document Request shall not waive any of the above stated objections.
- 9. Defendant objects to the Document Requests to the extent that they are vague, ambiguous, overbroad, unduly burdensome, duplicative, cumulative or otherwise unclear as to the precise information sought.
- 10. Defendant objects to the Document Requests to the extent that they seek information that Defendant does not maintain in the normal course of its business.
- Defendant objects to the Document Requests to the extent that they seek confidential, proprietary, or business information of Defendant.
- 12. The decision by Defendant to respond to the Document Requests, notwithstanding the objectionable nature of any of the individual document request, definitions, or instructions, should not be construed as: (a) an admission that the document and information provided is relevant or admissible; (b) a waiver of any general or specific objection; or (c) an agreement that requests for similar documentation and information will be treated in a similar manner. The Defendant

specifically reserves all objections to the competency, relevancy, materiality and admissibility of the information provided, and all objections as to burden, vagueness, unintelligibility, breadth, and ambiguity.

- 13. Defendant objects to the Document Requests on the grounds and to the extent that compliance would be unduly burdensome. As used herein, "unduly burdensome" means that responding to the Document Request requires an unreasonably extensive or expense search for documents and information that are of little or no value to this lawsuit, such that the burden and expense of obtaining the documents or information far outweigh the value of their production.
- 14. Defendant's attorneys drafted these Responses and are responsible for their word usage and sentence structure.

DOCUMENTS REQUESTED

- Each different form of any document that promotes, advertises,
 announces, or solicits any property, goods, or services of Creditsmarts, and which was
 sent by or on behalf of Creditsmarts by facsimile transmission.
- RESPONSE: Exhibit A attached to Plaintiff's Complaint. The facsimiles Creditsmarts typically sent contained its rates and guidelines. No other companies are mentioned in those faxes. The rates and guidelines change so Creditsmarts does not have any of those facsimiles. Exhibit A is not typical. Exhibit A was sent by a former employee without Creditsmarts knowledge. Exhibit A does not mention Creditsmarts nor have any rates or guidelines.
- All documents that indicate that any person, including but not limited to
 Plaintiff, gave prior express permission or invitation to Creditsmarts to receive

facsimile transmissions of any document referred to in Request No. 1, or that relate to how such prior express permission or invitation was sought or obtained RESPONSE: Creditsmarts offers lending and compliance solutions to non-franchise automobile dealers. Creditsmarts dealers have the opportunity to offer their car buying customers loan programs with interest rates and other terms that otherwise would not be available. The Creditsmarts employees each contact 80-100 auto dealerships and lenders a day. The automobile dealers and lenders are in the Creditsmarts general database. Creditsmarts employees follow a written script to introduce Creditsmarts and its programs, briefly explain why the automobile dealers and lenders should subscribe to Creditsmarts services and to request the automobile dealers and lenders to watch a live demonstration of Creditsmarts services on line. If the automobile dealer or lender does not express any interest or declines, then this is noted in their file in the general database and no further contact, including calling or faxing, is made. Pursuant to the script, for those automobile dealers and lenders who do express an interest in Creditsmarts services, Creditsmarts employees next request specific information from them, including, contact name(s), address(es), phone numbers, facsimile numbers and specific information about their businesses and needs. Creditsmarts specifically asks each automobile dealer and lender who expresses any interest in Creditsmarts services for their permission to receive information that advertises and explains Creditsmarts opportunity and services (program guides, rate sheets, etc.). This information is required by Creditsmarts in order to create an internal record in Creditsmarts live data base and before any demonstration can be given then or at a later date. The sales message and procedure

is the same and accomplished in a uniform manner to all automobile dealers and lenders. Those automobile dealers and lenders who express any interest in Creditsmarts services also make inquiries as to Creditsmarts' products and services and/or request information about the opportunity and services. The automobile dealers and lenders who wish to do business with Creditsmarts and have consented to receive facsimile advertising materials in the ordinary course of such business relationship are individually added to a separate live automobile dealer and lender database maintained by Creditsmarts. The members of that organically created business to business database are divided into three (3) categories: (1) automobile dealers and lenders who have subscribed to be a Creditsmarts member, agreed to the Terms and Conditions of Creditsmarts and paid for Creditsmarts full suite of services; (2) Free subscribers, sponsored by lenders who want to do business with specific automobile dealers, who subscribe and agree to the Terms and Conditions for a lesser level of services; and (3) Inactive dealers Creditsmarts spoke to and who were subscribers for the Creditsmarts services but are no longer paying their subscriptions and other dealers Creditsmarts contacted and were fully and completely entered into the live data base and who gave their permission to receive facsimiles from Creditsmarts. Each automobile dealer and lender in the live database provided all of its information, agreed to the Terms and Conditions of Creditsmarts, agreed to receive facsimiles advertising Creditsmarts services (e.g. rates and guidelines) and has an EBR with Creditsmarts. The recipients of each separate fax transmission are separately chosen from the subscribers in the most current version of the live database depending upon the nature, extent, location and/or subject matter of the

facsimile. Creditsmarts employees make calls to and also receive calls from automobile dealers and lenders who are no longer in business or no longer wish to do business with Creditsmarts or no longer wish to receive facsimile advertisement materials from Creditsmarts. Some automobile dealers and lenders wish to get the information on the facsimiles online or from other sources. Some do not wish to receive facsimiles. These automobile dealers and lenders call Creditsmarts and Creditsmarts promptly removes their names and fax numbers or they call the toll free removal number on the opt-out notice on Exhibit A and their fax number is removed immediately.

3. All documents indicating that an established business relationship existed between Creditsmarts and any person, including but not limited to Plaintiff, to whom any facsimile transmission of any document referred to in Request No. 1 was sent.

RESPONSE: See Response #2

4. All documents that indicate that Plaintiff gave prior express permission or invitation to Creditsmarts to receive facsimile transmissions of Exhibit A to the Complaint, or that relate to how such prior express permission or invitation was sought or obtained.

RESPONSE: See Response #2.

 All documents indicating that an established business relationship existed between Creditsmarts and Plaintiff at the time Exhibit A to the Complaint was faxed.

RESPONSE: See Response #4. Creditsmarts employees contacted and interacted with Plaintiff in the same method and manner as it does for all of its subscribers and pursuant to the script. Plaintiff would not be entered into Creditsmarts live data base without first expressing an interest in Creditsmarts opportunity and services and then providing its name, address, phone and fax numbers. When this occurred, Plaintiff would also be asked to give its prior consent to receive materials that explain the Creditsmarts opportunity and services by facsimiles. The expression of interest in Creditsmarts opportunity and services, requests for information and further inquiries would also be the basis for the formation of an EBR with Plaintiff. Plaintiff was entered into the live database on November 4, 2011. Plaintiff was categorized as an Inactive dealer in its database. Creditsmarts employees contacted Plaintiff at least two (2) more times in November 2011 and March 2012. Discovery from Plaintiff's current and former employees, including Troy Casey, Anthony Salkauski, Deborah Shadow, Rhonda Banks, Salina Singleton and Sara Lwin-Robertson will also reveal additional contacts and discussions by Creditsmarts with Plaintiff, Plaintiff's prior consent and business relationships with Creditsmarts and the business relationships with BMW, Liberal Finance, Excel Credit Union and Plaintiff's buyers who used Creditsmarts services.

6. All documents identifying any entity that sent any facsimile transmissions of any document, by or on behalf of Creditsmarts, to Plaintiff.

RESPONSE: Westfax, Inc. Invoice dated December 30, 2012. The Invoice was previously provided to Plaintiff's counsel and Defendant BMW's counsel as a part of the Westfax, Inc. Affidavit.

7. Any contract or advertising agreement entered into between Creditsmarts and any third party for fax broadcasting services to be provided by that third party or by any other party.

RESPONSE: The Customer Agreement between Creditsmarts and Westfax, Inc.

8. All invoices, bills, purchase orders, receipts, statements, or other documents which set forth or identify the number, dates, charges, credits, offsets, or amounts owed or paid to any third person for the creation or transmission by facsimile of any document referred to in Request No. 1, including without limitation creation or transmission of Exhibit A to the Complaint.

RESPONSE: Westfax, Inc. Invoice dated December 30, 2012 sets forth the amount owed and paid for the transmission of Exhibit A.

9. All correspondence with any person who was involved in the facsimile transmission of any document referred to in Request No. 1, including without limitation creation or transmission of Exhibit A to the Complaint.

RESPONSE: None

- 10. All documents exchanged between Creditsmarts and any third party regarding the fax broadcasting services provided by a third party to Creditsmarts.

 RESPONSE: None. Creditsmarts uploaded its Order to the Westfax, Inc. web based fax broadcast platform to transmit.
- 11. All documents that indicate or tend to indicate the number of transmissions, via facsimile by or on behalf of Creditsmarts of Exhibit A to the Complaint.

RESPONSE: Westfax, Inc. Invoice dated December 30, 2012.

12. All documents identifying the identities, addresses, or telephone or fax numbers to which facsimile transmissions of Exhibit A were sent by or on behalf of Creditsmarts.

RESPONSE: None. Creditsmarts proprietary, confidential, organically created and dynamically changing live data base may have been a source for some of the requested information but there are no documents to confirm or substantiate that. Exhibit A was not typical of the facsimiles containing rates, guidelines and other information and so there is no prior practice or course of conduct to make any such determination.

13. All documents which identify how removals or opt-out requests are and were handled by Creditsmarts.

RESPONSE: None. Creditsmarts used a free toll free removal service offered by Westfax, Inc. As a practical matter, Creditsmarts subscribers who did not wish to receive facsimile advertising materials from Creditsmarts for any of a variety reasons called Creditsmarts or called the toll free removal number on Exhibit A for a prompt removal of their facsimile numbers. The free toll free removal service is automatic and self-executing by the caller. Creditsmarts is not aware of any issue or complaint regarding the opt-out notice or any failure to promptly remove a customer's facsimile number upon request.

14. All documents which identify the number of days needed to comply with each removal or opt-out request.

RESPONSE: None. See Response #13. Westfax, Inc.'s free toll free removal service automatically and immediately removes any facsimile number a caller requests to be removed.

15. A mirror image of each hard drive, backup server, or device used in connection with the facsimile transmissions of Exhibit A to the Complaint (including devices used to transmit Exhibit A or a fax list to a fax broadcaster).

RESPONSE: Creditsmarts has no knowledge or record of a hard drive, backup server or device that was used to upload Creditsmarts order to Westfax Inc.'s web based fax broadcast platform.

16. A mirror image of each hard drive, backup server, or device containing information relating to the sending of the facsimile transmission attached as Exhibit A to the Complaint, including any device that contains or contained communications between Creditsmarts and the fax broadcaster (including, e.g., deleted emails or other files).

RESPONSE: Creditsmarts has no knowledge or record of a hard drive, backup server or device that has any information relating to the fax transmission of Exhibit A.

There are no communications between Creditsmarts and Westfax Inc.'s web based fax broadcast platform for the transmission of Exhibit A.

17. All documents that contain, refer to, set forth, or explain Creditsmarts's policy or practice regarding transmission of faxes, including any policy or practice with regard to (1) obtaining prior express permission or invitation to send, via facsimile to any person; (2) maintaining a log or record showing that an EBR exists

between Creditsmarts and any person, and the date and manner such EBR was formed.

RESPONSE: Creditsmarts is a small company. It does not have a formal written policy or practice. See Response #2 and Response #4.

18. All documents that contain, refer to, set forth, or explain Creditsmarts's policy or practice concerning any database that Creditsmarts used to compile lists for sending fax advertisements or promotions.

RESPONSE: Creditsmarts is a small company. It does not have a formal written policy or practice. See Response #2 and Response #4.

19. A copy of any database or list of telephone or fax numbers to which Creditsmarts attempted to transmit Exhibit A to the Complaint, or from which telephone or fax numbers were selected for transmission of Exhibit A to the Complaint.

RESPONSE: Creditsmarts has no such data base. The live data base that contained fax numbers that may have been used to select some of the fax numbers for transmission of Exhibit A was substantially larger than the number of recipients allegedly sent Exhibit A. The existing live data base is still substantially larger and now also substantially different than the live data base on December 27, 2012. The existing live data base has been substantially altered by updates, deletions, etc. and contains proprietary and confidential information.

20. Documents that Creditsmarts reviewed or relied upon in answering the Interrogatories.

RESPONSE: Creditsmarts insurance policy and its express exclusion for fax liability, the two agreements Creditsmarts entered into with BMW that expressly prohibited any advertising and were previously provided to Plaintiff's counsel and Defendant BMW's counsel, Exhibit A, Westfax, Inc. December 30, 2012 Invoice, Creditsmarts script, Plaintiff's website that contains its facsimile number and Creditsmarts website.

21. All documents that identify persons involved in creating or transmitting Exhibit A to the Complaint.

RESPONSE: None

22. All forms of advertisement created or used by Creditsmarts in promoting "up2drive" or BMW.

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RESPONSE: Exhibit A. A former employee cut and pasted the BMW name, picture and logos on Exhibit A from the Internet without Creditsmart's or Defendant BMW's knowledge, consent, permission, participation, involvement or authority.

23. All documents concerning Creditsmarts' efforts to promote "up2drive" or BMW.

RESPONSE: Creditsmarts made no effort to promote "up2drive" or BMW. Exhibit A contains the phrases "BMW Bank of North America" and "up2drive" but does not mention Creditsmarts. Creditsmarts commenced it business relationship with BMW in June 2012. The two (2) agreements Creditsmarts entered into with BMW expressly excluded Creditsmarts from promoting "up2drive" and BMW. Creditsmarts web based business did not involve promoting BMW. Creditsmarts markets its services to automobile dealers who subscribe to have the ability to offer an array of high quality

lenders to their customer car buyers. The concept is similar to The Lending Tree for bank loans. When an automobile dealer sells a car and the buyer seeks financing, the buyer may quickly, efficiently and confidentially submit his or her credit information to Creditsmarts website. If the credit is satisfactory, Creditsmarts offers the subscribing automobile dealer's buyer a variety of lenders who are Creditsmart subscribers and who offer loans to car buyers with the buyer's individual level of creditworthiness. Automobile dealers and lenders are not promoted. A lender is not even revealed until the car buyer's credit information has been submitted and approved. Creditsmarts business practice does not use facsimiles to identify or generate new automobile dealers and lenders.

24. All agreements, including without limitation statements of work, between Creditsmarts and the BMW Defendants.

RESPONSE: UP2DRIVE / Vendor Marketing Agreement and Master Professional Services Agreement previously provided to Plaintiff's counsel and Defendant BMW's counsel.

25. All correspondence (whether hard copy, electronic or otherwise) between Creditsmarts and the BMW Defendants concerning a potential or actual business relationship between them, including without limitation the solicitation, negotiation, performance or termination of any agreements between them.

RESPONSE: None.

26. All documents concerning proprietary or confidential information shared between Creditsmarts and the BMW Defendants.

RESPONSE: None. There is proprietary and confidential computer code integrating Creditsmarts and BMW computer servers so BMW may receive borrowers' electronically stored information.

27. All documents concerning communications between Creditsmarts and the BMW Defendants relating to advertisement, promotion or publicity for their relationship, "up2drive" or other BMW trademarks, including without limitation communications regarding Exhibit A to the Complaint.

RESPONSE: RESPONSE: None. There is the UP2DRIVE / Vendor Marketing
Agreement and Master Professional Services Agreement previously provided to
Plaintiff's counsel and Defendant BMW's counsel. These agreements expressly
prohibit such activities. Creditsmarts received one email from BMW regarding the
MSA and it is attached.

28. All documents that set forth or describe Creditsmarts's document destruction and retention policies.

RESPONSE: None. Creditsmarts follows federal and state laws with respect to confidential and private credit and other information and records.

29. All documents containing communications with any person or entity, other than your attorney, regarding any complaint about or objection to an advertisement sent by facsimile.

RESPONSE: None. Creditsmarts has never had any such complaints or objections.

30. All legal filings, letters of inquiry, notices, or other forms of complaints filed against or received by Creditsmarts (other than by Plaintiff), which attempt to allege a violation of the Telephone Consumer Protection Act.

RESPONSE: None. Creditsmarts has never had any such filings, notices or complaints.

31. All documents concerning Plaintiff.

RESPONSE: The information in Creditsmarts live database, on Plaintiff's website and Plaintiff's serial filings as TCPA class plaintiff and the discovery from such lawsuits regarding Plaintiff.

- 32. All documents Creditsmarts plans to introduce into evidence at trial.

 RESPONSE: Creditsmarts objects to this Request. Creditsmarts has not completed its search for documents, Discovery is just underway and the F.R.C.P. do not require that such documents be provided at this time. Creditsmarts has not made any plans at this time with respect to any evidence it may introduce at trial.
- 33. All documents Creditsmarts plans to use for demonstrative purposes at trial.

RESPONSE: Creditsmarts objects to this Request. Creditsmarts has not completed its search for documents, Discovery is just underway and the F.R.C.P. do not require that such documents be provided at this time. Creditsmarts has not made any plans at this time with respect to any documents it may use for demonstrative purposes at trial.

34. All documents Creditsmarts plans to use for impeachment purposes at trial.

RESPONSE: Creditsmarts objects to this Request. Creditsmarts has not completed its search for documents, Discovery is just underway and the F.R.C.P. do not require that such documents be provided at this time. Creditsmarts has not made any plans at

this time with respect to any documents it may use for impeachment purposes at trial.

- 35. All documents Creditsmarts plans to use for rebuttal purposes at trial.

 RESPONSE: Creditsmarts objects to this Request. Creditsmarts has not completed its search for documents, Discovery is just underway and the F.R.C.P. do not require that such documents be provided at this time. Creditsmarts has not made any plans at this time with respect to any documents it may use for rebuttal purposes at trial.
- 36. All documents relied on by any expert expected to testify in this litigation.

RESPONSE: Creditsmarts objects to this Request. Creditsmarts has not completed its search for documents, Discovery is just underway and the F.R.C.P. do not require that such documents be provided at this time. Creditsmarts has not relied upon any documents at this time and has not identified any experts who may testify at trial.

37. All of Creditsmarts's insurance policies, including umbrella and excess policies.

RESPONSE: Creditsmarts insurance policy, including the express exclusion for fax liability were previously provided to Plaintiff's counsel and a copy was forwarded to Defendant BMW's counsel. Creditsmarts will provide again the extent so requested in writing.

38. All correspondence between Creditsmarts and any insurance company, broker, or agent, concerning or relating to a tender of this lawsuit, a reservation of rights or a denial of coverage for the claims in this litigation.

RESPONSE: The letter and email denying insurance coverage pursuant to the express exclusion are attached.

Respectfully submitted,

By: /s/ Robert A. Smith

Robert A. Smith SMITH & DORAN, PC

60 Washington Street, Suite 302 Morristown, New Jersey 07960 Telephone: (973) 292-0016 Telecopier: (973) 292-9168

Attorney for Defendant CREDITSMARTS CORP.

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2014, I caused a true and correct copy of Creditsmarts Responses to Plaintiff's First Set of Requests for Production to be served upon all counsel of record in this case in accordance with the Federal Rules of Civil Procedure and the District of New Jersey's Local Rules on Electronic Service:

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Attorney for BMW Bank of North America, Inc.

I certify that the foregoing statements made by me are true. I am aware that if any such statements are willfully false, I am subject to punishment.

Dated: February 4, 2014

/s/ Robert A. Smith

Attorney for Creditsmarts Corp.

up office





up2drive is the newest division of BMW Bank of North America. backed by award-winning customer service and industry-leading online security technology.

If application status is Approved, call 888-998-2725 to inquire about the necessary documents needed for funding.

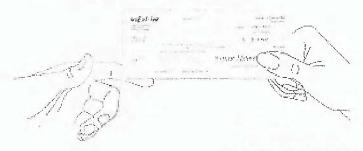
Hours: Monday-Friday 10:00 am – 6:00 pm (Eastern)

ADDITIONAL USED CAR LOAN CONDITIONS AND RESTRICTIONS

- Loan-to-Value not greater than 110% of Kelley Blue Book (KBB) Retail value. Multiply the KBB Retail value by 1.10 (or 110%). The final sale price you negotiate with the dealer cannot exceed this value.
- If the requested term is less than or equal to 60 months, vehicle must be model year 2006 or later. If the requested loan term is greater than 60 months, vehicle must be model year 2008 or later.
- Mileage cannot exceed 90,000 miles.
- May not be used at a BMW or MINI Dealership.
- No Purchases from private sellers FRANCHISED DEALERSHIPS or CREDITSMARTS MEMBER DEALERSHIPS!
- No purchase of auto leases.
- You may only purchase one vehicle with this drive check™.
- No vehicles manufactured by Suzuki, recreational vehicles, ATVs, jet skis, boats, mobile homes, motor homes, camper vans, trailers, conversion vans, commercial vehicles, business vehicles, leased vehicles, amphibious vehicles, armored vehicles, motorcycles, limousines, taxis, tow trucks, tractors, dump trucks, freight liners, farm equipment, kit cars, branded/junk/salvage/rebuilt title vehicles, grey market vehicles, lemon law vehicles, converted engine vehicles, three-wheeled vehicles, vehicles that do not have a Vehicle Identification Number (VIN) or title issued, repossessed vehicles, vehicles sold through brokers/auction houses, vehicles sold to members of the same family/same address and vehicles being sold by a business.
- No powers-of-attorney on Dealership vehicle purchases.
- No cash back to borrowers on Dealership vehicle purchases.

Spend it!

Follow the instructions on the loan packet, give the completed drive check® to the dealership to complete the purchase!







WESTFAX, INC. CUSTOMER AGREEMENT

WestFax, Inc. ("WestFax") agrees to provide the services set forth in this agreement to	
Credit Spile (Carporation (the "Customer") in consideration of the	
Customer's acknowledgement and agreement to the following terms and conditions. The Customer hereby	
acknowledges and agrees to the terms and conditions set forth herein by accepting the services provided to it l	оу
WestFax.	

- 1. EFFECTIVE DATE. This Agreement shall begin on the date WestFax first provides its services to the Customer. Provisions of Articles 3, 4, and 5 shall survive termination of this Agreement and be binding hereto. The customer has the right to terminate this agreement with 30 days notice. Sections 3, 4, and 5 will still apply.
- 2. SERVICES. WestFax will provide its services to the customer in consideration of payment of amounts specified for the services performed pursuant to this agreement and for the Customer's agreement to be bound by the terms and conditions set forth herein. The services provided by WestFax shall be set forth on a separate Work Order or "Broadcast Fax Order Form" provided by Customer to WestFax. All orders are subject to acceptance by WestFax prior to the orders being undertaken. All accepted orders shall be performed in accordance with the Customer's properly formatted instructions, documents, and databases transmitted to WestFax. WestFax is not responsible for any special instructions, additional specifications or additional services not set forth herein unless it specifically agrees in writing to such items in advance.
- 3. PAYMENT. WestFax will provide a summary invoice to the customer for the services it performs for the Customer on a regular basis. Payment of the invoice is due within thirty (30) days after the date of the invoice. WestFax reserves the right to change the terms of payment for the Customer in general, and/or for any work order, including requiring pre-payment and/or canceling, suspending or rescheduling orders until the terms of payment have been agreed to by WestFax. Invoices that have not been paid within thirty (30) days after due date are subject to a one and one-half per cent (1.5%) per month finance charge computed from the due date until paid by the Customer. The Customer agrees to pay all costs and expenses incurred by WestFax to collect any amount due hereunder or otherwise enforce the terms and conditions of this Agreement, including reasonable attorney fees and costs.
- 4. COMPLIANCE WITH LAW. The Customer acknowledges and agrees that WestFax is in the business of providing the medium to enable the Customer to make broadcast fax communications. WestFax is merely the agent providing the technology and medium for the Customer to send the broadcast fax and is not the advertiser or otherwise involved in any content contained in the fax broadcast communication. WestFax will provide its services only in strict compliance with applicable federal, state and local laws, rules and regulations. By requesting WestFax to provide services for its benefit, the Customer acknowledges and agrees that it will fully comply with such laws, rules and regulations, including in particular, the Telephone Consumer Protection Act ("TCPA") and all state laws similar or related thereto. The Customer agrees to fully release and discharge WestFax from any violation of any law or regulation, not to bring suit or any other claim against WestFax on account of such laws, and to fully defend, pay any damages and hold WestFax harmless from any violations of such federal, state and local laws, rules and regulations.

- 5. LIMITATION OF LIABILITY. WestFax's total liability for damages to the Customer or any third party for any service provided by WestFax to the Customer shall be limited to the amount charged to the Customer for the particular service performed by WestFax pursuant to the work order. IN NO EVENT SHALL WESTFAX BE LIABLE FOR ANY DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS OR OTHER MONETARY LOSS, LOSS OR INTERRUPTION OF DATA, AUTHORIZED OR UNAUTHORIZED USE OF OR ACCESS TO DATA, PROGRAM ERRORS OR PATENT OR COPYRIGHT INFRINGEMENT CLAIMS.
- 6. RECORDS. WestFax shall have no obligation to maintain any Customer information or Customer Records (including billing information) in its database or in any other format. The Customer hereby acknowledges and agrees that all information and records may be deleted and/or destroyed at any time by WestFax. Customer also hereby consents to WestFax's summary invoices of services rendered and agrees to remit payment in accordance with such invoice.
- 7. MISCELLANEOUS. If any provision of this agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining portions of this agreement shall not be affected or impaired by such determination. This agreement is not assignable and any attempt to assign shall be void. The failure of either party to enforce any term or condition of this agreement shall not constitute a waiver of such party's right to enforce each and every term of this agreement. This agreement shall be interpreted and enforced in accordance with the laws of the State of Colorado.

I have read and agree to the terms and conditions listed above.

Signed;
Company Name

Authorizing Signature & Date

Title

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BMW Financial Services NA, LLC POLICY



BMW Financial Services NA, LLC

Policy Name	Last Update	Pages
Electronic Communication and Phone Usage	March 19, 2012	4

ELECTRONIC COMMUNICATION AND PHONE USAGE POLICY

General

BMW Financial Services provides telephone and electronic communication tools to help improve productivity and enable associates to provide efficient, high quality work. Telephone and electronic communications include, but are not limited to, all aspects of voice, video, computer files, computer navigation, voice mail, recordings, e-mail, fax, and Internet (including social networking sites such as Facebook, LinkedIn and Twitter).

These resources should primarily be used for business related purposes. Associates must abide by BMW Financial Services' policies and procedures with regard to business and personal use as well as access and security.

BMW Financial Services' telephone and electronic communications tools are considered Company assets. While BMW Financial Services respects the privacy and security needs of all associates, authorized Company representatives may access these assets for legitimate business reasons.

BMW Financial Services also recognizes that associates may have a need to carry personal cell phones and electronic communication devices. Please observe the following guidelines for use of any phone or electronic communication device.

Business / Personal Use

All BMW Financial Services telephone and electronic communication tools are to be used primarily for business purposes. Personal use of these tools, as well as use of personal cell phones and electronic communication devices, is allowed only if it:

- is incidental in nature and does not interfere with the associate's job responsibilities.
- does not interfere with BMW Financial Services' business and is not detrimental to BMW Financial Services
- does not affect productivity, quality, or customer service
- does not occur while working with a customer and does not inhibit an associate's ability to work with customers.
- does not create a conflict of interest does not contribute to personal financial gain

Associates usage of social networks is also subject to the Reference and Online Networking Policy.

Security and Usage

Attempts to breach security measures are prohibited. The internal safeguards established by BMW Financial Services and the use of passwords are designed to protect the confidentiality of any

Patterson Reporting & Video

Electronic Communication and Phone Usage Policy, Page 1 of 4

BMW Financial Services NA, LLC POLICY



information that is exchanged. However, these safeguards are not foolproof and associates should be aware that there is no guarantee of confidentiality.

The primary responsibility for ensuring the confidentiality of personal communications lies with the associate. Associates must use passwords to prevent unauthorized access to electronic communications and should observe procedures that prevent others from viewing materials on their screen.

Any associate that abuses access privileges or passwords by allowing unauthorized access into any telephone and electronic communication system or device may be subject to appropriate disciplinary action up to and including termination. However, executive assistant accounts, administrative assistant accounts, and other approved electronic communication proxy accounts may be established as business needs dictate.

Under no circumstances is an associate authorized to use the mailbox of another associate for transmitting a message that appears to be from another associate. Likewise, attempting to access the voice mail or e-mail messages of another associate, without their consent or authorization, is a violation of Company policy and subject to disciplinary action up to and including termination.

Directories, mailing lists, or distribution lists of user email addresses shall not be made available for public or commercial access.

In the use of the Internet, associates need to be aware that information communicated may be intercepted and accessed illegally. Therefore, these users should take the following precautions to protect against security violations:

- Never transmit or discuss sensitive information
- Never give access to passwords to anyone

Associates must comply with any applicable licenses or agreements (e.g., computer software, telecommunications access).

Standard architecture of software and hardware may not be changed without approval from FZ-418.

System Security after Employment

When associates leave BMW Financial Services, the appropriate phone and system administrators, including, but not limited to, specialized department systems or software, in order for the associate's name and passwords to be deleted from the system, should be notified. This should be done at the earliest possible time after the associate departs. Below outlines who is responsible for sending these notification:

- BMW Financial Services Associates: Human Resources
- Temporary Associate: the respective temporary organization
- Consultants: Information Services

Electronic Communication and Phone Usage Policy, Page 2 of 4

BMW Financial Services NA, LLC POLICY



FZ-418 is responsible for taking inventory of all software and hardware products to ensure that they have been returned and in proper order.

Electronic Communications Guide

It is unacceptable for an associate to use, submit, publish, display, or transmit on any BMW Financial Services' telephone or electronic communication systems or devices information which:

- Violates or infringes on the rights of any other person, including the right to privacy;
- Contains defamatory, false, abusive, obscene, pornographic, profane, sexually-oriented, threatening, offensive, illegal, discriminatory or otherwise biased material;
- Violates Company policy regarding discrimination or sexual harassment;
- · Restricts or inhibits other users from using the system;
- · Restricts or inhibits the efficiency of the computer systems; or
- · Uses the system for any other illegal purpose.

It is also unacceptable for an associate to use any telephone or electronic system or device to:

- · Conduct any unapproved business activities;
- Transmit material, information, or software in violation of any local, state, or federal law;
- · Conduct any political activity;
- Conduct any non-BMW-related or non-BMW-approved fund-raising or public relations activities;
- Engage in any activity for personal gain or personal business transactions;
- · Engage in any activity related to other employment or self-employment.

Monitoring and Personal Phone Usage

All telephone and electronic systems and communications transmitted by, received from, or stored in the systems are the property of BMW Financial Services.

- BMW Financial Services reserves the right to monitor and record messages, conversations, screen navigations and materials transmitted over all telephone and electronic communication devices.
- BMW Financial Services reserves the right to review all associate electronic communications and may use them in disciplinary actions. BMW Financial Services may retrieve electronic communications even though the associate may have deleted them.
- During the course of ordinary business, members of the management team or their designee may listen in on phone lines, both live and recorded, to ensure associates are being respectful and responsible to customers or for other legitimate business purposes.
- Business calls and screen navigations may also be monitored and recorded for training purposes to critique customer service skills and provide feedback for job performance as needed.
- Associates will be informed that conversations may be monitored and recorded at any time during business calls without notification. Customers will also be notified of possible monitoring and recording.

Electronic Communication and Phone Usage Policy, Page 3 of 4

BMW Financial Services NA, LLC POLICY



 Information obtained during ordinary call monitoring, which is in violation of other BMW Financial Services polices, can be used in disciplinary action.

Personal calls on BMW Financial Services phones (including cell phones reimbursed by BMW Financial Services) are permitted if these calls do not negatively impact productivity. Associates are required to reimburse BMW Financial Services for any incremental costs incurred as a result of these personal calls. A continuous excessive level of non-business related phone calls on company phones is unacceptable and basis for disciplinary action up to and including termination.

Violations

Associates determined to have violated the Electronic Communication and Phone Usage Policy will be subject to disciplinary action up to and including termination of employment.

Electronic Communication and Phone Usage Policy, Page 4 of 4

Affiliate DealerID Branch DealerNan Contact Address City State ZIP (n/a) 29071 City Select 4375 Rout Burlington NJ 8016



Telephone Fax EMail DealerTyp IIca YearsInBus DMV TaxID Flooring (609) 877- (609) 877- Independe

CreateDati UpdateDat CreateUse UpdateUst rowVersio activated LoginPrefit AffiliateID CREDIT_TU 11/4/2011 2/15/2012 csmarts_ir csmarts_ir 1 True 0 False

DealerStat ZimpleMo: FORM_CO rate_plan setup_cos! monthly_c rate_plan_cd 2/15/2012 0

AutoWebExperts



Login «

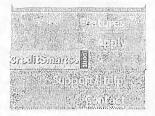
Launch Demo «



AutoWebExperts <-Advantages

Accessing Your & Account

Pricing &



Advantages *

Auto dealers face no shortage of web strategy options. Here's why so many of them have selected CreditSmarts'AutoWebExperts solution:

Turnkey Website with Add-On Enterprise Email

Implementing an Internet presence can be a daunting challenge even for some of the most technology savy companies. For the typical auto dealer, the challenge can be even greater. CreditSmarts solves all that by providing turnkey website capabilites. No longer does an auto dealer have to worry about all the issues that come along with setting up a website, such as where/how to host the site, as CreditSmarts takes care of all that.

Using CreditSmarts's AutoWebExperts™, we can have your website site up and running with in days, as compared to weeks if you were to build it yourself or hire someone to build it. That means you don't have to costly network to support and no expensive technology staff to hire.

With a CreditSmarts AutoWebExperts™ website, we host, deploy and manage your website for a low monthly fee. We can provide you with 10 email accounts using the domain name of your choice, plus a select list of standard email adresses like *sales@yourdomain.com*. Moreover, you have full control over the content of the site and can choose different graphics and color schemes. You can even get your email through your AutoWebExperts™ site and view website traffic statistics in real-time!

Translation: your customers get access to your business through your online web and email systems which allows you to create a new channel for acquiring new customers and servicing current and repeat business.

Real-Time Customer Financing

At CreditSmarts, we understand the financial challenges of doing business in today's market. Our goal is simple - allow auto dealers to do what they do best - sell product. Why spend time shopping rates and lenders? Simply enter your customer financing needs into the CreditSmarts LoanLocator™ system and we forward the loan request to the appropriate lenders. Those lenders will present the best possible pricing available for the customer. CreditSmarts will timely route the pricing offers back to you, permitting the selection of the best offer suited to your customer's financing needs - all in real-time!

Not only do you get access to CreditSmarts's world-class LoanLocator™ system, your customers can get financing directly through your AutoWebExpert's site, so that they can often be pre-approved for a loan before even reaching your showroom.

Translation: your customers get better rates, helping you to improve your closing ratios, through our online credit matching system - all within seconds!

Real-time Inventory Management

CreditSmarts's asset liquidation model is an open market place for inventory management

and liquidation. A sellers list assets into the database, which provides the information to prospective buyers within the specified geographic location. Buyers will present an offer based upon the desired asset.

Great Service

It's not that we don't like our customers. We just don't want them to call us. Sound





Frequently Asked Questions

More often than not, someone who is just learning about CreditSmarts will ask, "How do I find information about each lender?" You can find the answers to this question and more below.

Q: What features does the CreditSmarts System offer?

A: Instant Loan Approvals, Direct Communication Channel with your Lenders, Automated Application Filter Routing, Read Friendly Credit Bureau Access, Online Loan Documents, Web Site Hosting, Customer Data Storage, To find out more, please read more about it's features.

Q: Can my negative credit customers get financing through my CreditSmarts site?

A: Yes, Absolutely. In fact, almost anyone that comes to your office can get financing using CreditSmarts's best-in-class class $LoanLocator^{TM}$ system

Q: What should I do if I have forgotten my User ID or password?

A: If you lost your password, please email support@CreditSmarts.com for a new one.

Q: When my customers' application is sent thru, how long before I receive a decision?

A: Some credit tiers have an immediate response, those credit applicants that warrant a manual underwrite are attended to by the lender's underwriting staff.

Q: How is my CreditSmarts account billed?

A: Standard billing is by merchant account (visa, m/c, American Express). Online loan contracts are purchased point of sale. You can find more about how to contact CreditSmarts on our website www.CreditSmarts.com

Q: What system requirements are needed to use CreditSmarts?

A: A standard personal computer with internet access should suffice. Internet Explorer 5.5 and above is preferred. Find more about our <u>system requirements section</u>.

Q: What happens if I cannot view a credit report?

A: The CreditSmarts system requires a pop-up window for a credit request. Check your system for a pop-up blocker and disable.

Q: I have trouble accessing some areas of CreditSmarts.

A: The CreditSmarts system is designed with the utmost security in mind. Thusly, your computer must allow CreditSmarts to establish a secure connection (128 bit ssl) and must allow CreditSmarts Cookies.

Q: How do I change my computers internet settings?

A: Open your internet browser. Refer to "Tools", Internet Options. Go to "Privacy" and set cookies at medium. Go to security and set "trusted sites", "restricted sites", and "internet" at medium or enable the CreditSmarts web site. In addition, the general tab setting has a button labeled "settings", click on this button and set your amount of disk space to use at 1 mb. This will optimize your browser.

Q: Haven't found the answer to your question?

A: Please email your questions to support@CreditSmarts.com A CreditSmarts Team Member is always eager to help!

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Login «

Launch Demo «



AutoWebExperts & Advantages

Accessing Your & Account

Pricing &



Advantages ÷

Auto dealers face no shortage of web strategy options. Here's why so many of them have selected CreditSmarts'AutoWebExperts solution:

Turnkey Website with Add-On Enterprise Email

Implementing an Internet presence can be a daunting challenge even for some of the most technology savy companies. For the typical auto dealer, the challenge can be even greater. CreditSmarts solves all that by providing turnkey website capabilites. No longer does an auto dealer have to worry about all the issues that come along with setting up a website, such as where/how to host the site, as CreditSmarts takes care of all that.

Using CreditSmarts's AutoWebExperts™, we can have your website site up and running with in days, as compared to weeks if you were to build it yourself or hire someone to build it. That means you don't have to costly network to support and no expensive technology staff to hire.

With a CreditSmarts AutoWebExperts[™] website, we host, deploy and manage your website for a low monthly fee. We can provide you with 10 email accounts using the domain name of your choice, plus a select list of standard email adresses like *sales@yourdomain.com*. Moreover, you have full control over the content of the site and can choose different graphics and color schemes. You can even get your email through your AutoWebExperts[™] site and view website traffic statistics in real-time!

Translation: your customers get access to your business through your online web and email systems which allows you to create a new channel for acquiring new customers and servicing current and repeat business.

Real-Time Customer Financing

At CreditSmarts, we understand the financial challenges of doing business in today's market. Our goal is simple - allow auto dealers to do what they do best - sell product. Why spend time shopping rates and lenders? Simply enter your customer financing needs into the CreditSmarts LoanLocator™ system and we forward the loan request to the appropriate lenders. Those lenders will present the best possible pricing available for the customer. CreditSmarts will timely route the pricing offers back to you, permitting the selection of the best offer suited to your customer's financing needs - all in real-time!

Not only do you get access to CreditSmarts's world-class LoanLocator™ system, your customers can get financing directly through your AutoWebExpert's site, so that they can often be pre-approved for a loan before even reaching your showroom.

Translation: your customers get better rates, helping you to improve your closing ratios, through our online credit matching system - all within seconds!

Real-time Inventory Management

CreditSmarts's asset liquidation model is an open market place for inventory management

and liquidation. A sellers list assets into the database, which provides the information to prospective buyers within the specified geographic location. Buyers will present an offer based upon the desired asset.

Great Service

It's not that we don't like our customers. We just don't want them to call us. Sound



strange? The way we see it, the best service we can provide our customers is a problem-free hosting experience, so they won't have to call us. We've stocked our online site management tools with more information and value-added services than most. AutoWebExperts customers can use our site to modify and setup their site, read/write emails, view credit reports, manage inventory, get customer financing, view credit reports, and much more.

Of course, there will always be times when our customers need us. That's why we have friendly, knowledgeable Account Specialists ready to answer questions. We strive to make on-hold times short to non-existent for our callers and email responses to be fast, accurate, and thorough. CreditSmarts customers value their time as much as their money, and CreditSmarts values its customers.

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Frequently Asked Questions

More often than not, someone who is just learning about CreditSmarts will ask, "How do I find information about each lender?" You can find the answers to this question and more below.

Q: What features does the CreditSmarts System offer?

A: Instant Loan Approvals, Direct Communication Channel with your Lenders, Automated Application Filter Routing, Read Friendly Credit Bureau Access, Online Loan Documents, Web Site Hosting, Customer Data Storage, To find out more, please read more about it's features.

Q: Can my negative credit customers get financing through my CreditSmarts site?

A: Yes, Absolutely. In fact, almost anyone that comes to your office can get financing using CreditSmarts's best-in-class class <u>LoanLocator™</u> system

Q: What should I do if I have forgotten my User ID or password?

A: If you lost your password, please email support@CreditSmarts.com for a new one.

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Login

Dealers, by logging into the CreditSmarts system you are acknowledging the terms and conditions set forth within the CreditSmarts system and to abide by such terms as well as by the lenders terms and conditions set forth within the Dealer Agreement posted online within the respective lender profile.

Thank you for your patronage!

	Realm:	Dealer	Y
	Company Code:		
8	Login Name:		
B	Password:		

Note for Experian/Transunion customers:

Access to Credit systems is for authorized users and only for permissible purpose access. Unauthorized access is prohibited under the Fair Credit Reporting Act and punishable by \$2500 and/or 1 year in Federal prison per occurrence.

For Password Reset or New Users call 1-888-345-0918:

CreditSmarts Team Members are eager to assist you with your lending or technical needs. Staffed during normal business hours our service managers are here for you.



City Select Auto Sales – Data Entries in CreditSmarts

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EXHIBIT!
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MASTER PROFESSIONAL SERVICES AGREEMENT

This MASTER PROFESSIONAL SERVICES AGREEMENT (the "Agreement"), dated as of 3/29//2	(the
This MASTER PROFESSIONAL SERVICES AGREEMENT (the Agreement), dated as of 2/2/1/2	V
"Effective Date"), is entered into by and among (COMPANY), a (COMPANY), a	
organized under the laws of the State of Delaware with offices located at	
organized under the laws of the State of Delaware with offices located at 231 E. Alessandi - 810-1. 488A Russia, and BMW Financial Services NA, LLC ("BMW FS"), a lim	rited liabilit
company organized under the laws of Delaware with its principal place of business at 5550 Britton Parkway, H	tilliard, Ohio
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43026.	

Background

Company is in the business of providing either professional consulting services and/or employment agency services and BMW FS desires to utilize the professional services of Company.

Terms

In consideration of the promises and of the mutual covenants and agreements contained herein, and intending to be legally bound, the parties hereby agree as follows:

Term. The term of this Agreement shall commence as of the Effective Date and shall continue until terminated by the parties pursuant to Section 6 herein. If Company commenced work in connection with the project(s) or permanently assigned workers described in any Statement of Work (as hereinafter defined) prior to the date of this Agreement, all provisions herein for the benefit or protection of either party shall apply to such activities.

Services.

- This Agreement establishes the standard terms and conditions pursuant to which BMW FS will obtain from Company, and Company will provide to BMW FS, such consulting or employment agency services as may be agreed upon from time to time in writing. Each such written agreement for services shall be referred to hereinafter as a "Statement of Work," and the services set forth in such Statement of Work to be provided by Company shall be referred to hereinafter, together with such product as may be applicable, as the "Services." Each Statement of Work shall substantially conform to the format set forth in either of the samples attached hereto as Exhibits A and B. To the extent of any express conflict or inconsistency between the terms and conditions of a Statement of Work and the terms and conditions of this Agreement, the terms and conditions of this Agreement will control.
- (b) Statements of Work entered into by the parties shall: (i) refer expressly to this Agreement; (ii) designate the date as of which the provisions of the Statement of Work will be effective; (iii) with respect to consultants, designate the term or period of time during which Company will perform services, provide resources or otherwise discharge its obligations as specified in the Statement of Work; (iv) describe the services to be performed, resources to be provided or obligations to be discharged by Company pursuant to the Statement of Work; (v) describe the obligations of BMW FS related to the Statement of Work, including any facilities, equipment, personnel and tasks or other support to be provided or performed by BMW FS; (vi) specify the payments to be made to Company under the Statement of Work, or, if applicable, the basis on which such payments will be computed; and (vii) specify any other terms and conditions appropriate to the services to be performed and the obligations of the parties.
- (c) Company agrees to provide its Services in a professional and timely fashion, and in accordance with the terms and conditions of this Agreement and the requirements, order of performance and delivery dates specified in each Statement of Work. Unless otherwise specifically agreed, the parties agree that: (i) time is of the essence in performance of this Agreement and each Statement of Work: (ii) that a schedule or date in a Statement of Work is critical to BMW FS in achieving its business objectives; and that (iii) failure of Company to meet a schedule or date in a Statement of Work will enable BMW FS, at its sole discretion, to terminate this Agreement and its duties and obligations hereunder.



3. Payment and Invoices. Unless otherwise expressly agreed by BMW FS, Company will be paid on a time-and-materials basis for providing Services at the rates as set forth in the applicable Statement of Work. Unless otherwise provided in a Statement of Work, Company shall invoice BMW FS each month for appropriate fees relating to the Services, together with an itemization of all out-of-pocket expenses and travel expenses incurred by Company for which it has been billed, during the preceding one month period. Each such invoice shall include the appropriate Statement of Work number, name of the individual(s), hours worked and period for which the invoice is submitted. Each such invoice shall be due and payable within 30 days after delivery to BMW FS. If payment is not received within 45 days, Company may assess a late charge at a rate of 1% per month on the outstanding amount until paid At BMW FS's request, separate invoices will be submitted by Company with respect to any products provided as part of the Services. Any and all out-of-pocket or travel expenses will be approved in writing in advance and reimbursed pursuant to BMW FS Travel Guidelines (attached hereto as Exhibit C).

Personnel.

- (a) Company shall be solely responsible for identifying its personnel to be assigned to perform the Services required under a Statement of Work. Each Statement of Work shall identify such personnel as identified by Company. If requested by BMW FS, Company will submit resumes to BMW FS for those personnel Company proposes to perform the Services. The parties recognize and agree that Company shall identify and retain skilled employees with experience and expertise appropriate for performance of the Services.
- (b) BMW FS may request at any time the removal of (and Company shall promptly remove) any employee of Company performing Services on behalf of Company. Company shall then propose and retain a replacement in a timely fashion for the removed employee, if applicable, acceptable to BMW FS.
- (c) Company personnel physically located at BMW FS's facilities shall comply with relevant work place standards and policies established by BMW FS and such other requirements as BMW FS may reasonably require.
- (d) It is understood and agreed that Company shall perform the Services as an independent contractor, and Company and its employees shall not be considered employees of BMW FS for any purpose whatsoever. Company shall be solely responsible for the arrangement and payment of any and all benefits, including workers compensation benefits, and employment taxes or any similar tax or benefit which is generally associated with the relationship between an employer and employee and required by local, state or federal law, ordinance or regulation. BMW FS shall have no responsibility or liability whatsoever for the withholding, collection or payment of local, state or federal income tax, FICA, FUTA and other taxes and applicable amounts with respect to payments made to Company.
- (e) Company periodically, at the request of BMW FS. shall provide to BMW FS such information, documentation or other records relating to Company's employees that BMW FS may require in order for BMW FS to obtain relevant tax incentives from the City of Hilliard ("City"). Any such information shall be used by BMW FS solely for purposes of obtaining such tax incentives. Company shall cooperate with BMW FS in providing such information directly to the City and Company shall also provide directly to the City such information as the City may need regarding income tax withholding for persons employed by Company who are subject to City income tax.

5. BMW FS Responsibilities.

- (a) BMW FS agrees to provide reasonable work space, administrative support, computer facilities and other support, each as may be described more particularly in a Statement of Work, which are necessary to perform the Services under a Statement of Work.
- (b) Should BMW FS fail to perform any of its obligations under this Agreement or a Statement of Work, Company shall not be responsible for any delay, cost increase or other consequences due to such failure, if such failure results in a delay during the course of a Statement of Work.

Termination and Events of Default.

(a) If either party fails to comply with the requirements of a Statement of Work, or the terms and conditions of this Agreement (except for a default in payments to Company which is treated in Section 6(b) below), and such failure is not cured within 30 days after written notice is given to the breaching party, then the other party may, by giving written notice to the breaching party, terminate this Agreement and/or the applicable Statement of Work as of the end of such 30-day period or such later date as is specified in such notice of termination.

- (b) In the event that BMW FS defaults in the payment when due of any amount due to Company and does not cure such default within 60 days after being given written notice, then Company may, by giving written notice to BMW FS, terminate this Agreement and/or the applicable Statement of Work as of the end of such 60-day period or such later date as is specified in such notice of termination.
- (c) If Company (i) becomes insolvent, fails to pay or admits in writing its inability to pay its debts; (ii) makes a general assignment or agreement with or for the benefit of its creditors; (iii) files a petition in bankruptcy or institutes any action for the relief of debtors or seeks or consents to the appointment of an administrator, receiver or custodian (or has such a petition or action filed against it); or (iv) is placed under receivership or conservatorship by a regulatory authority, BMW FS shall have the right to terminate this Agreement immediately, in whole or in part, and shall be relieved of any further obligations and liabilities hereunder.
- (d) Either party may upon giving 30 days written notice terminate this Agreement or any Statement of Work for any reason whatsoever.
- (e) Immediately upon termination, Company shall return, or shall cause to be returned, to BMW FS any and all materials received from BMW FS or its affiliates by Company and/or its employee, including any and all lists, compilations or extracts thereof in whatever form or format.
- 7. Representations and Warranties. In addition to the other representations and warranties of Company set forth herein, Company further represents and warrants to BMW FS: (i) that it has the requisite power and authority to enter into and perform its obligations under this Agreement and each Statement of Work0; (ii) that execution and delivery of this Agreement and performance of the Services set forth herein do not and shall not conflict with any other agreements or understandings to which Company is a party or by which it may be bound; (iii) that the Services provided by Company shall be provided to BMW FS free and clear of any right, title or interest of any third-party; and (iv) that the Services will be performed in a professional manner by qualified personnel. The foregoing representations and warranties shall be deemed given by Company for itself and for any, agents and employees employed by Company.

8. Indemnification.

- (a) Company and BMW FS each agree to indemnify, defend, and hold harmless the other from and against any and all amounts payable under any loss, judgment, verdict, court order or settlement for (i) a breach of Section 9 of this Agreement; or (ii) death, bodily injury; or damage to, destruction of or loss of any real or tangible personal property to the extent arising out of the indemnitor's negligence in the performance of this Agreement.
- (b) Company agrees to indemnify, defend, and hold harmless BMW FS and its affiliates, officers, employees, directors, shareholders and contractors, from and against any and all liability, loss, cost, and expense, however arising, including reasonable attorney fees, incurred: (1) as a direct or indirect result of any breach by Company or any employee of Company, of its or their agreements, representations and warranties under this Agreement, as well as any and all amounts payable under any judgment, verdict, court order or settlement relating thereto; (2) relating to any and all taxes (other than sales tax) and other levies relating to payment of fees to Company under this Agreement. The foregoing indemnification shall also apply to the extent that any such liability, loss, cost or expense arises from any third party allegation that the Services, the Software, and the systems or materials provided, if any, or work performed, by Company under this Agreement infringes such party's United States or foreign patent, or United States or foreign copyright, trademark or trade secret. Should BMW FS's use of such systems, materials or work performed be determined to have infringed, or if such use is likely to be infringing. Company shall, at the sole discretion of BMW FS: (i) procure for BMW FS the right to continue using such systems, materials or work performed; or (ii) replace or modify them to make their use non-infringing while yielding substantially equivalent results. Notwithstanding the foregoing, Company shall indemnify BMW FS fully for any such infringement.

Confidentiality and Safeguards.

9.1. Confidential Customer Information. BMW FS possesses certain confidential information about its Customers defined below:

"Customer" means any buyer, prospective buyer, or guarantor of a vehicle under a retail installment contract, lessee, prospective lessee, or guarantor under a retail lease of a vehicle from BMW Bank or BMW FS, deposit customer or prospective deposit customer under a deposit account agreement with BMW Bank, any credit card customer or prospective credit card customer of BMW Bank, and any borrower or prospective borrower of BMW Bank. Customer includes any former Customer of BMW FS or BMW Bank.

"Nonpublic Personal Information" means personally identifiable financial information of Customers, or any list, description, or other grouping of Customers, whether in paper, electronic or other form, that is derived using any personally identifiable financial information (as defined in 16 CFR § 313.3(o)), that is not publicly available (defined in 16 CFR § 313.3 (p)), and that (a) a Customer provides to BMWFS to obtain a financial product or service from BMW FS, (b) results from having a transaction between the Customer and BWM FS involving a financial product or service; or (c) BMW FS otherwise obtains about a Customer in connection with providing a financial product or service (hereinafter referred to as "NPI"). For the purposes of this Agreement, BMW FS considers NPI to include any information about any of its Customers that BMW FS discloses to Company.

- 9.1.1. In order that Company may perform its obligations under any agreement Company now has or in the future may have with BMW FS, BMW FS may disclose NPI to Company.
- 9.1.2. All NPI disclosed under this Agreement by BMW FS shall be used by Company only for the purpose for which it is disclosed to Company in the performance of its obligations to BMW FS and shall be disclosed by Company to the directors, officers, employees, agents, Affiliates or advisors of Company only on a "need to know" basis.
- 9.1.3. Company is prohibited from disclosing or using the NPI other than in the ordinary course of business to carry out the purposes for which BMW FS discloses the NPI.
- 9.1.4. The provisions of this Agreement that restrict the disclosure and use of NPI by Company shall be deemed to be incorporated into any agreement including a written contract that constitutes a "joint agreement" between Company and BMW FS, and shall be accorded the full force and effect of the law, notwithstanding any reference in any such agreement to the effect that such agreement constitutes the entire understanding of the parties with respect to the subject matter thereof.
- 9.1.5. Company may disclose NPI received under Sections 9.1.1 through 9.1.4 above to its Affiliates; provided, however, that Company's Affiliates may disclose and use NPI only to the same extent that Company may disclose and use NPI as provided in this Agreement.
- 9.1.6. Except as provided in this Agreement, Company shall not directly or indirectly, through an Affiliate or otherwise, disclose NPI to any person or entity.
- 9.2. Safeguards Provisions. The handling, use, disclosure and reuse of NPI is governed, in part, by Title V of the federal Gramm-Leach-Bliley Act ("the Act") and the Federal Trade Commission's rules (as each may be amended from time to time) regarding the security, confidentiality and integrity of NPI, 16 C.F.R. Part 314 (2002) (the "Safeguards Rule"), BMW FS is directly subject to the Safeguards Rule. To the extent that Company is a "tinancial institution," Company is also directly subject to the Safeguards Rule, If the Company is a non-affiliated "service provider" (as defined in the Safeguards Rule) to BMW FS, which shall receive NPI in the course of providing services pursuant to the Agreement, Company is indirectly subject to the Safeguards Rule. As such, BMW FS is required by the Safeguards Rule to secure contractual assurances from Company that Company will implement and maintain safeguards for NPI in accordance with the Safeguards Rule. All parties subject to the Safeguards Rule must comply with its requirements. Company specifically agrees as follows:
 - 9.2.1. In performing services for BMW FS under its agreement(s), Company, its directors, officers, employees, agents, Affiliates, or advisors of Company shall use administrative, technical and physical safeguards and procedures in connection with accessing, collecting, processing, storing, using, transmitting, disposing of or otherwise handling NPI.
 - 9.2.2. Except as may be required by law enforcement, pursuant to court order, subpoena, or other legal process. Company, its directors, officers, employees, agents, Affiliates, or advisors of Company shall not permit access to the NPI except on a "need to know" basis, that is, that the NPI shall not be disclosed except to

those individuals who need to know the information to provide the services or products contracted for under the agreement(s), and shall keep the NPI Information confidential.

- 9.2.3. Company, its directors, officers, employees, agents, Affiliates, or advisors of Company shall maintain information systems (network, hardware and software), which are capable of detecting, preventing and responding to reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information in their possession, including attacks, intrusions and other systems failures. In the event any of the NPI is subject to such an attack, intrusion or other system failures that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information. In the event of any such attack, intrusion or system failure, Company shall immediately notify BMW FS, providing complete and accurate details of the event.
- 9.2.4. The obligations of Company under this Section are continuing obligations. Company agrees to periodically test the efficacy of its security policies and procedures. Company agrees to inform its directors, officers, employees, agents, Affiliates, or advisors of Company of the provisions of this Section.
- 9.2.5. BMW FS or its designated representatives, during normal business hours, have the right to conduct audits and review Company's operations, systems and records at Company's business premises in order to evaluate and confirm Company's compliance with its obligations pursuant to the Safeguards Rule.
- 9.3. Proprietary And Other Confidential Information. This sub-section applies to certain proprietary and confidential information other than NPI.
 - 9.3.1. BMW FS and Company each possess certain proprietary and confidential information, (hereinafter referred to collectively as "Information"). Such proprietary and confidential information relates to:
 - (a) Automotive financing products and processes of BMW FS and information related thereto or arising therefrom;
 - (b) Financial information of BMW FS and Company and information related thereto or arising therefrom; and
 - (c) Certain technology, know-how, data and/or other information relating to current and/or proposed products of BMW FS and Company.
 - 9.3.2. BMW FS and Company each desire to share in confidence some of such Information in their possession with one another. The party providing Information in each case is called the "Provider"; the party receiving the Information is called the "Recipient".
 - 9.3.3. All Information disclosed under this Agreement by Provider shall be used by Recipient only for the purposes of the engagement as set out in a separate contract between the parties, and shall be disclosed to the directors, officers, employees, agents, Affiliates or advisors of Recipient on a "need to know" basis only.
 - 9.3.4. Recipient shall not disclose Information received from Provider. Recipient shall use the same care to prevent disclosure of the Information of Provider which Recipient uses to protect its own most valuable proprietary information, but in no event less than a reasonable degree of care for such Information.
 - 9.3.5. The obligations of the Recipient hereunder shall not apply to any Information of Provider which: (a) was in the public domain at the time it was disclosed; (b) enters the public domain other than by breach of this Agreement by Recipient; (c) is known to Recipient at the time of its disclosure to Recipient by Provider; (d) is disclosed to Recipient by a third party who has the right to do so; (e) is developed by Recipient independently of any disclosure by Provider hereunder; (f) is disclosed by Provider to a third party without the restrictions and obligations imposed upon Recipient by this Agreement; or (g) is not identified as material considered proprietary at the time it is provided.
 - 9.3.6. Upon termination of this Agreement, within ten (10) business days of receiving a written request, Recipient shall return all Information in tangible form to Provider or, with the consent of Provider, destroy all Information.

BMW FS and Company agree that the other will be irreparably harmed in the event of a breach of Section 9 of the Agreement. In the event of a breach, the injured party shall be entitled to equitable relief, including injunctive relief and specific performance. Each party agrees to indemnify and hold the other party harmless from and against any and all claims, liabilities, demands, losses, damages, judgments, actions and causes of action, including expenses, costs and reasonable attorneys' fees that a party may at any time sustain or incur arising from or as a result of the other party's failure to comply

with its confidentiality obligations under this Agreement or under the law. Such remedies shall not be exclusive, but shall be in addition to all other remedies available at law or in equity.

Company agrees that all employees assigned to work on-site at any BMW FS location will be given a copy of <u>Section 9</u> of this Agreement and will acknowledge receipt thereof in writing. Company will retain records of these acknowledgements. BMW FS reserves the right to audit these records upon reasonable advance notice to Company.

Ownership. Company agrees that title to all materials and deliverables, in whatever form (including written, electronic, or other), and including any lists, extracts or compilations thereof, originated and/or prepared for BMW FS under and this Agreement, shall be and remain the sole property of BMW FS, and shall be delivered by Company to BMW FS free and clear of any rights of any third-parties whatsoever. The ideas, methods, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements and other information developed during the course of this Agreement by Company and/or BMW FS personnel, may be used by BMW FS, without an obligation to account, in any way that BMW FS deems appropriate, including by or for its own affiliates, or customers, notwithstanding anything to the contrary contained in this Agreement. Any and all Services and deliverables shall be considered works for hire, and shall vest in BMW FS full and exclusive right, title and interest in and to such deliverables. Deliverables shall be deemed to include any and all material including programs, tapes, listings, compilations and extracts prepared pursuant to the Statements of Work.

All work product of any kind, tangible or intangible, developed by or contributed by Company (including Subcontractors) in connection with this Agreement or with the use of BMW FS resources, and all related patents, copyrights and other intellectual property rights (collectively "Custom Work") shall be the exclusive property of BMW FS, shall be considered a "work-made-for-hire" to the extent permissible under applicable law and is otherwise hereby irrevocably assigned to BMW FS without further charge or cost. Such Custom Work may include, but is not limited to computer programs, literary articles, factual compilations, recordings, video tapes, multi-media content, images, musical work, sounds, algorithms, protocols, diagrams, methods, papers, documents, letters, memoranda, tape recordings, drawings and records of any sort as well as ideas, expressions, inventions, discoveries, improvements, developments and information. Company will promptly disclose and describe in writing to BMW FS from time to time, including upon request, any such Custom Work. Company will execute such applications, assignments and other instruments and provide such cooperation reasonably requested by BMW FS to give full effect to the provisions of this paragraph. Company warrants and covenants that it has caused or shall cause each of its Personnel, before they do any work in connection with this Agreement, to enter into written agreements necessary to carry out and provide for the full intent of this Section, will make BMW FS a third party beneficiary of such agreements and will deliver fully signed copies of same prior to commencement of work by such persons or entities on behalf of BMW FS.

Any work product provided by Company in connection with this Agreement which is not to be considered Custom Work shall be specifically listed in the applicable Schedule; otherwise, it shall be deemed to be Custom Work.

- 11. <u>Modifications.</u> At any time during the term of this Agreement, if BMW FS or Company should desire to recommend an addition. modification or change to Company's required performance hereunder, such change must be in writing and executed by both parties.
- 12. <u>Subcontracts.</u> Company may not subcontract any Services without the prior written approval of BMW FS. Company shall be responsible for the fulfillment of its obligations hereunder, as well as those of any subcontractor or employee hereunder, notwithstanding the performance of such obligations by its subcontractors, and shall secure compliance by such subcontractors and employees with each and every term and condition of this Agreement.
- 13. Audit. BMW FS or its designated representatives, during normal business hours, has the right to conduct audits and review Company's operations, systems and records at Company's business premises relating to the provision of any and all services pursuant to this Agreement and in order to evaluate and confirm Company's compliance with its obligations pursuant to this Agreement, including but not limited to the Safeguards Section.
- 14. Background Checks and Screenings. For purposes of this Section 14, "place personnel with BMW FS" and "placement with BMW FS" or any derivation thereof shall each mean placement of personnel on-site with BMW FS or affiliates of BMW FS as well as assignment of personnel for the performance of services to, for, or on behalf of BMW FS or affiliates of BMW FS to the extent that such assignment enables personnel to have access to NPI or Information (as each term is defined in Section 9 above) or to otherwise have access to assets, funds, proceeds, or payment instruments of BMW FS, affiliates of BMW FS, or customers of each. Company warrants and represents

that Company shall not place personnel with BMW FS unless Company has ensured that such personnel have been screened for the following immediately prior to placement with BMW FS: (1) illicit drug use as determined by a standard 10 Panel Drug Test; (2) criminal background as determined by a standard background check that is designed to reveal any federal, state, or local felony crime of any nature, or any federal, state, or local non-trafficrelated misdemeanor offense; and (3) derogatory credit history as determined by a consumer report obtained from a consumer reporting agency as defined by the Fair Credit Reporting Act (collectively referred to hereinafter as the "screenings"). The cost of all screenings performed in accordance with this Section 14 shall be paid by Company without reimbursement from BMW FS. In performing the screenings, Company agrees to comply with the requirements of the Fair Credit Reporting Act. Company further warrants and represents that Company shall not place personnel with BMW FS if the results of the screenings for such personnel do not conform to the applicable standards provided by BMW FS in writing to Company. With respect to personnel placed with BMW FS, Company further agrees to perform new screenings on a biennial basis, or prior to contract (or purchase order) renewal (whichever occurs later). In the event that the results of any screenings of personnel placed with BMW FS do not conform to the applicable standards provided by BMW FS in writing to Company, Company shall notify BMW FS immediately and shall promptly withdraw the placement of such personnel with BMW FS. Company agrees to maintain the results of the screenings performed in accordance with this Section 14 and all related records and files for the duration of the placement of personnel with BMW FS to the extent permitted by applicable law. Company further agrees that BMW FS may audit, and Company shall timely make available to BMW FS, the full detailed results used to determine successful completion of the screenings and all related records and files of Company upon reasonable advance notice. Prior to placement at BMW FS, Company agrees to obtain the written consent of Company's employees authorizing the sharing of such results, records, and files with BMW FS for purposes of the

- 15. Insurance. During the term of this Agreement and any Statement of Work, Company shall maintain in effect the following levels of insurance coverage:
 - (1) General Liability -\$1,000,000 Each Occurrence
 - (2) Evidence of Worker's Compensation Employer's Liability \$1,000,000
 - (3) Crime
 - -\$1,000,000 Employee Dishonesty-
 - -must include 3rd party coverage (BMW FS Coverage)

All coverages must:

- include BMW FS as an Additional Insured
- be written by an insurance company with an A.M. Best's rating of "A-" or better
- be written on an occurrence form
- include 30 days notice of cancellation to Additional Insured
- include Waiver of Subrogation in favor of BMW Financial Services NA, LLC
- primary to any insurance coverage carried by BMW FS

16. General.

- (a) This Agreement shall be deemed to include all Statement of Works issued hereunder. This Agreement constitutes the entire agreement between the parties and there are no prior or contemporaneous, oral or written, representations, understandings or agreements relating to the subject matter hereof which are not fully expressed herein.
- (b) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PROVISIONS THEREOF. COMPANY AGREES TO JURISDICTION OF CLAIMS ARISING UNDER THIS AGREEMENT IN THE STATE AND FEDERAL COURTS LOCATED IN FRANKLIN COUNTY, OHIO.
- (c) No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or a breach of any other

covenant. No waiver or discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

- This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their permitted successors and assigns, and nothing in this Agreement shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. Company may not assign or transfer this Agreement or any rights or obligations hereunder, without the prior written consent of the BMW FS. Any attempt to assign or transfer this Agreement in violation of this subsection shall be void and of no force and effect.
- (e) Neither party shall publicize their relationship or the terms of this Agreement or any Statement of Work or use the other party's name or other trademarks or service marks in any advertisement or publication without the other party's prior written approval. Except as aforesaid in this Section 16 (e), the terms and conditions of this Agreement shall be considered Confidential Information and neither party may disclose the terms and conditions of this Agreement without the other party's prior written consent.
- (f) The representations, warranties and obligations set forth in Sections 7, 8, 9, 10, 11, and 16 shall survive termination or expiration of this Agreement and shall remain in full force and effect.
- (g) Whenever under this Agreement one party is required or permitted to give notice to the other, such notice shall be deemed given when delivered in hand or three days after being sent by United States mail, registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

In the case of Company:	In the case of BMW FS:		
CREDITSMARTS Corp 231 E. Alessondro Bld. 488A	BMW Financial Services NA, LLC 5550 Britton Parkway Hilliard, OH 43026		
Riverside CA 92508	Attn:		
Attn: Legal	With a required copy to:		
,	Legal Department BMW Financial Services NA, LLC 5550 Britton Parkway Hilliard, OH 43026		

Either party hereto may change its address for notification purposes from time to time by giving the other party prior written notice in accordance with this Section of the new address and the date upon which it will become effective.

- (h) This Agreement may not be assigned by Company unless BMW FS is given at least 30 days advance written notice at which time BMW FS may decide, in its sole discretion, to either accept the assignment or cancel the Agreement.
- (i) If any provision of this Agreement is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, but if the remainder of this Agreement shall not be affected by such declaration or finding and is capable of substantial performance, then each provision not so affected shall be enforced to the extent permitted by law.
- (j) All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.
- (k) Where agreement, approval, acceptance, consent or similar action by BMW FS or Company is required, such action shall not be unreasonably delayed or withheld.

In witness whereof, each of the parties have caused this Agreement to be executed on its behalf by its duly authorized representative as of the date first above written.

	2
BMW FINANCIAL SERVICES NA, LLC	COMPANY
Ву:	Ву:
Name:	Name: Credit Smarts
Title:	Title: CEO
Ву:	
Name:	
Title:	

EXHIBIT A

STATEMENT OF WORK - Consulting Services

Company:	
Client Representative:	
Client: BMW Financial Services BMW FS Manager:	
This Statement of Work is governed by the Master Profession BMW FS on BMW reserves the right to project deliverables specified in this contract must be extended	extend services if the expected completion date of
BMW FS Role: Project Deliverables - Scope/Engagement Description:	
Consultant:	
Duration:	,
Compensation: There will be no contractual rate increase for	or overtime, holidays or weekends.
BMW FINANCIAL SERVICES NA, LLC	COMPANY
Ву:	Ву:
Name:	Name. Seen Ryan
Title:	Title:
Date:	Date:
Ву:	
Name:	
Title:	

EXHIBIT B

STATEMENT OF WORK – Employment Agency Services

Company:	
Client Representative:	
Client: BMW Financial Services BMW FS Manager:	
This Statement of Work is governed by the Master Profess BMW FS on Each employee governe the right to re-assign the employee to perform different dut	sional Services Agreement entered into between Company and od by this MPSA is assigned on a permanent basis. BMW reserves ties.
BMW FS Role: Scope/Engagement Description:	
Consultant:	
Duration:	
Compensation: There will be no contractual rate increas	e for overtime, holidays or weekends.
BMW FINANCIAL SERVICES NA, LLC	COMPANY
By:	By:
Name:	Name: Sean Ryan
Title:	Title:
Date:	Date:
By:	
Name:	
Title:	
Nate:	

Exhibit C

Travel Expense Guidelines

All business travel expenditures incurred by Consultant will be subject to review and approval by BMW FS subject to the guidelines below. The Guidelines may be amended from time to time. Receipts will be required for all expenditures over \$10.00

1. Meal Reimbursement

Meals will be reimbursed on a per diem basis per diem with a limit of \$50.00 per day (\$9 breakfast, \$16 lunch, and \$25 dinner). Breakfast is an allowable per diem expense in all cases except when a Hotel includes the breakfast in the rate, and then breakfast must be deducted from the per diem expense. Lunch cannot be claimed as per diem meal when working at a BMW location that has a BMW Cafeteria.

2. Hotel Reimbursement

The maximum rate of hotel reimbursement is as follows:

City		Max Hotel Rate
Boston, MA		\$260
Downtown Chicago, IL		\$250
Los Angeles, CA	\$220	
Miami, FL		\$250
New York, NY		\$285
Seattle, WA		\$200
Phoenix/Scottsdale, AZ	\$230 (11/15-4/30)
Naples/Ft. Meyers & Ft. Lauderdale, FL.	\$230 (11/15-4/30)
San Francisco, CA		\$220
San Juan, PR		\$250
Washington, D.C. & Sterling/Arlington, VA		\$270
London, England	\$250	
All other locations (including Europe)		\$180
3. Airfare Class: Coach		

4. Ground Transportation: Reimbursed at actual with receipts.

- 5. Other Expenses: BMW FS considers the following to be reimbursible "Other Expenses" while on approved business travel:
 - a. Taxi and travel by other public transportation
 - b. Porter and baggage storage, etc.
 - c. Parking Fees (not tickets)
 - d. Mail and telephone charges when receipts are provided
 - e. Tolls
 - f. Tips and service expenditures (not in connection with meals which fall under guidelines for meals)

UP2DRIVE / VENDOR MARKETING AGREEMENT (04/06/2012)

This is an Agreement between BMW Pinancial Services NA, LLC in its capacity as service provider for up2drive, a division of BMW Bank of North America ("up2drive"), with its principal place of business at 5550 Britton Parkway, Hilliard, OH 43026 and CREDITSMARTS Corporation ("Vendor") with its principal place of business at 231 E. Alessandro #488A Riverside, CA 92508. The purpose of this Agreement is to allow up2drive to offer its financial services to the visitors of the Vendor's web site(s).

This agreement is governed by the MSA entered into between Vendor and up2drive in March of 2012 and incorporates by this reference the terms and conditions of the MSA. If the terms and conditions of the MSA and this Agreement conflict, the MSA shall prevail.

For the purposes of this agreement the DEALER/DEALERSHIP is defined as an automotive retail center that sells products or services for consumer purchase on a retail installment contract.

WHEREAS, Vendor offers potential borrowers the opportunity to complete a simple application form so that certain income and credit information may be provided to lenders who offer various consumer credit products, including but not limited to automobile loans, and other products as may be offered;

WHEREAS, up2drive desires to provide conditional approvals to qualified customers, to offer automobile loans or other various consumer loan products to approved customers, and to perform such other duties as are set forth in this Agreement;

WHEREAS, Vendor desires to match qualified customers with the appropriate lender by evaluating customers whose credit profile passes the minimum credit parameters established by up2drive and to provide such other services as set forth in this Agreement; the parties hereto agree as follows:

VENDOR RESPONSIBILITIES:

- 1) Vendor will establish electronic systems to permit customers to communicate with up2drive through mutually agreed secure lines of communication.
- 2) Vendor will process all application forms using the minimum credit parameters established by up2drive and the information obtained ("Customer Information") from the application form including the customer's credit history, that will provide sufficient data to determine whether the customer may qualify for any loan programs offered from by up2drive.

UP2DRIVE RESPONSIBILITIES:

- 1) up2drive shall provide to Vendor information about: (a) which loan products are to be offered through this agreement, and (b) general institution information (including logos or Trademarks) to be published on the Vendor web site (Creditsmarts.com).
- up2drive will provide Vendor with standard reporting as necessary to effectuate this Agreement. All information reported will be treated confidentially by the parties.

REVENUE AND FEES:

- up2drive will pay to Vendor \$100.00 per funded loan submitted through the Vendor application system. Payments will be made to Vendor monthly for loans that were funded in the previous month.
- Vendor will pay up2drive 30% of the received net monthly recurring DEALER service charge once a month on a re-occurring basis
 per DEALERSHIP that is or has been referred by up2drive to the CREDITSMARTS' Platform.

LAUNCH: The estimated launch date is April 16th, 2012.

TERM: The initial term of this agreement is one month from the launch date and is automatically renewable for successive one-month terms unless written notice of termination is provided by either party no less than thirty (30) days prior to the end of the then-current term.

Neither party shall publicize their relationship or the terms of this Agreement or use the other party's name or other trademarks or service marks in any advertisement or publication without the other party's prior written approval.

No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or a breach of any other covenant. No waiver or discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

If any provision of this Agreement is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, but if the remainder of this Agreement shall not be affected by such declaration or finding and is capable of substantial performance, then each provision not so affected shall be enforced to the extent permitted by law.

This Agreement shall be blading upon and inure solely to the benefit of the parties hereto and their permitted successors and assigns, and nothing in this Agreement shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. Vendor may not assign or transfer this Agreement or any rights or obligations hereunder, without the prior written consent of UP2DRIVE. Any attempt to assign or transfer this Agreement in violation of this subsection shall be void and of no force and effect.



INDEMNIFICATION, Vendor and UP2DRIVE each agree to indemnify, defend, and hold harmless the other from and against any and all amounts payable under any loss, judgment, verdict, court order or settlement for death, bodily injury; or damage to, destruction of or loss of any real or tangible personal property to the extent arising out of the indemnitor's negligence in the performance of this Agreement. Vendor and UP2DRIVE agree to indemnify, defend, and hold harmless the other and its affiliates, officers, employees, directors, shareholders and contractors, from and against any and all liability, loss, cost, and expense, however arising, including reasonable attorney fees, incurred: (1) as a direct or indirect result of any breach by each other or any employee of either company, of its or their agreements, representations and warranties under this Agreement, as well as any and all amounts payable under any judgment, verdict, court order or settlement relating thereto; (2) relating to any and all taxes (other than sales tax) and other levies relating to terms under this Agreement.

This Agreement constitutes the entire agreement between the parties and there are no prior or contemporaneous, oral or written, representations, understandings or agreements relating to the subject matter hereof which are not fully expressed herein.

BMW FINANCIAL SERVICES NA, LLC

Dated:

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY CAMDEN VICINAGE

CITY SELECT AUTO SALES, INC., a New Jersey corporation, individually and as the representative of a class of similarly situated persons,

Civ. Action No.-13-cv-4595 (NLH-JS)

Plaintiff.

V.

BMW BANK OF NORTH AMERICA, INC., BMW FINANCIAL SERVICES NA, LLC, CREDITSMARTS CORP., and JOHN DOES 1-12.

Defendants.

AFFIDAVIT OF SEAN RYAN

The affiant, first being duly sworn upon his oath, states:

- 1. My name is Sean Ryan. I am President of Credifsmarts Corp. ("Credifsmarts"). I have personal knowledge of the facts stated herein.
- 2. Creditsmarts' address is 231 E. Alessandro Blvd., 488A, Riverside, California 92508.
- 3. Creditsmarts is named as a Defendant in the above captioned case. As part of this case, I am providing this Affidavit.
- 4. Creditsmarts' Business is an Internet based Lending Tree business model to small independent auto dealers.

Creditsmarts.com allows its auto dealers' customers the opportunity to complete a simple loan application form online. The information submitted is automatically sent to Creditsmarts' participating lenders who offer auto loans. If initial income and credit information is adequate, the auto dealer's customer may select from a list of auto lenders. The auto lender the customer selects and the customer and the auto dealer then directly complete the formal loan process as



required by law for an auto loan and car sale. Creditsmarts' service is all online and self-executing on Creditsmarts' website. The service does not involve personal contact or communication between Creditsmarts, auto dealers, auto lenders, and auto borrowers.

5. BMW Financial Services NA, LLC ("BMWFS") is a division of BMW Bank of North America. BMWFS business is an auto lender.

Up2Drive is the one auto loan program BMWFS agreed to offer on Creditsmarts' website. This is the only connection / relationship BMWFS and Creditsmarts have.

Creditsmarts entered into two (2) Agreements with BMWFS

The Master Professional Services Agreement dated 3/29/12 ("MPSA") is attached as Exhibit 1

BMWFS is a "vendor" and one of many auto lenders of Creditsmarts per the MPSA. Section 2 (a) Services states that BMWFS retains Creditsmarts to get the Up2Drive program on Creditsmarts website and the referral of potential auto borrowers from Creditsmarts auto dealer clients functioning. Section 4 (b) states Creditsmarts shall perform its services as an independent contractor. Section 9.3.3 and 9.3.4 state that all BMWFS information is confidential and shall only be used for purpose of making Up2Drive loan available on Creditsmarts website and shall not be otherwise disclosed. Section 16(e) states neither party shall publicize their relationship or the terms of this Agreement or use the other party's name or other trademarks or service marks in any advertisement or publication without the other party's prior written approval.

Creditsmarts did not request or obtain written or other approval for any advertisement or publication including the 1 fax advertisement.

The Up2Drive / Vendor Marketing Agreement dated 4/18/12 ("VMA") is attached as Exhibit 2.

The VMA allows Up2Drive to offer its financial service (loan) to the visitors of the Creditsmarts website. The VMA is governed by the MSA entered into 3/29/12. If the terms and conditions of the MSA and VMA conflict the MSA shall prevail. Creditsmarts is obligated to establish electronic systems to permit customers to communicate with Up2Drive on mutually agreed secured lines of communication. Neither party shall publicize their relationship or the terms of this Agreement or use the other party's name or other trademarks or service marks in any advertisement or publication without the other party's prior written approval.

7. The Sender was Creditsmarts

The 1 fax was created and sent inadvertently by an employee of Creditsmarts on December 27, 2012. Creditsmarts sent the 1 fax using a fax broadcaster and paid the fax broadcaster for its fax broadcasting services. The Invoice from the fax broadcaster is attached as Exhibit 3. The Affidavit from the fax broadcaster stating it broadcasted the 1 fax for Creditsmarts on December

27, 2012 and that it has no contact, relationship or business with BMWFS is attached as Exhibit 4.

8. BMWFS did not send the 1 fax.

Notary Public

My Commission Expires:

- BMWFS had no awareness of or anything to do with the 1 fax. BMWFS did not 9. prepare, approve, sanction, or participate in the 1 fax that was sent. BMWFS has no control over Creditsmarts advertising, business or the 1 fax Creditsmarts sent.
- 10. BMWFS provided no express consent, authorization, or direction for Creditsmarts to act to send the 1 fax.
- 11. Creditsmarts "relationship with BMWFS is for a limited purpose" and that is solely to offer the Up2Drive auto loan on Creditmsmarts website. The service provided is all electronic and self-executing. There are no people, discussions or communications or other relationships.
- tes

12. BMWFS did not hold out or agree that Creditsmarts is its agent. The MPSA state
the parties' agreement is confidential.
Further affiant sayeth not. Dated this 2 red day of December 2013.
CREDITSMARTS CORP.
By:
Sean Ryan, President
STATE OF CALIFORNIA)
County of Riverside) ss.
On this the day of December 2013, before me, the undersigned Notary Public, personally appeared Sean Ryan, President of Creditsmarts Corp. and affirmed that he executed the Affidavit for the purposes therein contained.
IN WITNESS WHEREOF, I hereunto set my hand and official scal.

See attatched.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California	Comment of the Commen
County of Riverside	
On December 2, 2013 before me, Avi	ise Mejia Notary Public,
personally appeared Sean	Ry and Name(s) of Signer(s)
ANISE MEJIA Commission # 1995773 Notary Public - California Riverside County My Comm. Expires Oct 27, 2016	who proved to me on the basis of satisfactory evidence to be the person whose name within instrument and acknowledged to me that the/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument the person or the entity upon behalf of which the person of acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
Place Notary Spal Above	WITNESS my hand and official seal. Signature Signature of Notary Public
Though the information below is not required by law, i	TONAL It may prove valuable to persons relying on the document estimated this form to another document.
Description of Attached Document	
Title or Type of Document: Affidave	it of Sean Ryan
Document Date: December 2, Z	0/3 Number of Pages: 3
Signer(s) Other Than Named Above:	
Capacity(ies) Claimed by Signer(s)	
Signer's Name: Individual Corporate Officer — Title(s): Partner — "I Limited _ I General Attorney in Fact Trustce Guardian or Conservator Other: Signer Is Representing:	Signer's Name: Lindividual Corporate Officer — Title(s): Partner — I Limited Li General Attorney in Fact Trustee Guardian or Conservator Other: Signer Is Representing:
The state of the s	

EXHIBIT 3

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY-CAMDEN VICINAGE

CITY SELECT AUTO SALES, INC., a

New Jersey corporation, individually
and as the representative of a class
of similarly-situated persons,

Plaintiffs,

vs.

No. 13-CV-4595
NLH-JS

BMW BANK OF NORTH AMERICA, INC., BMW

FINANCIAL SERVICES NA, LLC, (CREDITSMARTS CORP., and JOHN DOES 1-12)

Defendants.

DEPOSITION OF ALEJANDRO GOMEZ, the witness herein, noticed by BOCK & HATCH, LLC, at 3403 Tenth Street, Riverside, California, at 9:01 a.m., on Monday, May 19, 2014, before Diana Austin, CSR 7375.

Hutchings Number 508441

	Z (Pages Z to 5
Page 2	Page 4
1 APPEARANCES OF COUNSEL:	1 EXHIBITS (Continued)
2	2 DEFENSE DESCRIPTION IDENTIFIED MARKED
3 For Plaintiffs:	3 11 Fax 42 64
4 BOCK & HATCH, LLC	[EXH-11]
5 BY JONATHAN B. PIPER	4 12 E-Mails 44 64
6 134 North La Salle Street, Suite 1000	12 E-Mails 44 64 5 [EXH-12]
7 Chicago, Illinois 60602	6 13 Customer Profile 47 64
8	[EXH-13]
9 For Defendant CREDITSMARTS CORP.:	7
10 WILLIAM B. HAYES, ATTORNEY AT LAW	14 WestFax Invoices 52 64
	8 [EXH-14]
11 257 Jackson Street	9 15 Drawing 58 64 [EXH-15]
12 Denver, Colorado 80206	10
13	11
For Defendants BMW BANK OF NORTH AMERICA, INC., BMW	12
15 FINANCIAL SERVICES NA, LLC:	13
16 STROOCK & STROOCK & LAVAN, LLP	14
17 BY RAYMOND A. GARCIA	15 16
18 180 Maiden Lane	17
19 New York, New York 10038-4982	18
20	19
21	20
22	21
23	22 23
24	23 24
25	25
ъ о	5 5
Page 3	
1 INDEX 2 WITNESS: ALEJANDRO GOMEZ	1 ALEJANDRO GOMEZ,
2 WITNESS: ALEJANDRO GOMEZ 3 EXAMINATION BY: PAGE	2 the witness herein, having been sworn, testifies as
4 MR. PIPER 5	3 follows:
5 MR. GARCIA 61	4
7 EXHIBITS	5 -EXAMINATION-
8 Exhibit identification within the transcript is flagged with "[EXH]" as an identifier.	6
9	7 BY MR. PIPER:
10 PLAINTIFF DESCRIPTION IDENTIFIED MARKED	8 Q. Could you state your name for the record.
11 1 E-Mails 9 64 [EXH-1]	9 A. Yeah, Alejandro Gomez.
12	09:01 10 Q. And where do you currently reside?
2 Fax 14 64 13 [EXH-2]	11 A. City of Menifee.
14 3 Fax 14 64	Q. Can you give me the street address?
[EXH-3] 15	13 A. Sure, 29132 Lighthouse Court.
4 WestFax Invoice 23 64	Q. Have you ever been deposed before?
16 [EXH-4]	09:02 15 A. No, sir.
17 5 WestFax Invoice 27 64 [EXH-5]	Q. Have you ever testified in court?
18	17 A. No.
6 WestFax Invoice 27 64 19 [EXH-6]	Q. Okay. Just for your benefit, she's going to
20 7 E-Mail 34 64	19 take down whatever you're saying. If you have any
[EXH-7]	09:02 20 trouble with any words or spelling, feel free to ask
21 8 E-Mails 34 64	21 during the course.
22 [EXH-8]	22 It helps if you give at the end of the day, she
23 9 Advertisement 41 64	needs an audible answer. So you need to say at the end
	needs an addicte answer. So you need to say at the chu
[EXH-9] 24	24 of the day, "yes" or "no." as onnosed to nodding your
	of the day, "yes" or "no," as opposed to nodding your head or shaking your head.

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		Page 6	l	_	Page 8
09:02	1	If you feel like any of my questions or any of the	09:04	1	A. Just through an opening.
	2	attorneys' questions are not clear, you should feel free		2	Q. Did you know Mr. Ryan before that?
	3	to ask to have the question rephrased or clarified. And		3	A. No.
	4	I talk slow. So it helps if you wait until I finish the		4	Q. So it was, like, a job ad?
09:02	5	question. That gives them a chance to make objections.	09:05	5	A. Yes.
	6	They have the right to make objections for the record.		6	Q. Did your responsibilities change during the
	7	But you don't have to worry about the objections.		7	period that you were working for CreditSmarts?
	8	That's for the benefit of the judge if he wants to rule		8	A. My job role was always varied. So I wouldn't
	9	about what's admissible testimony. And if you get too		9	really say it did change. You just do what you have to
09:03	10	confused by their objections, then we'll have to read	09:05	10	do in a small company
	11	the question a second time		11	Q. Okay.
	12	A. Sure.		12	A when required.
	13	Q it will take more time. And regardless of		13	Q. When did you leave CreditSmarts?
	14	what objections they make, you should answer the		14	A. Late 2013.
09:03	15	questions. Except, I don't think it's likely, but it's	09:05	15	Q. And why did you leave CreditSmarts?
	16	possible that if you had attorney/client privilege		16	A. I opened my own business.
	17	information from when you were a CreditSmarts employee,		17	Q. So you resigned from your position?
	18	like you talked to a company lawyer back then, then		18	A. Yeah, I gave my notice and moved on.
	19	Mr. Hayes would have the right to ask you not to answer		19	Q. Did your decision to resign at CreditSmarts
09:03	20	the question because it goes into the company's	09:05	20	have anything to do with this lawsuit?
	21	privilege. But I doubt that will come up. Don't pay		21	A. No.
	22	attention too much about the objections, just try to		22	Q. Did it have anything to do with issues about
	23	focus on the question. Give your best answers, and		23	whether you had sent faxes of the company?
	24	we'll move along.		24	A. No.
09:03	25	A. Will do.	09:06	25	Q. What are you doing now?
		Page 7			Page 9
09:03	1	Q. Okay. Now, this case mainly involves events in	09:06	1	A. I run a used car store.
05.05	2	late 2012. Where were you employed in how were you		2	Q. Okay. Do you have a lot there?
	3	employed in 2012?		3	A. Yes.
	4	A. I was employed by CreditSmarts as a salary		4	Q. Okay. Why don't you tell me the name and
09:04	5	employee.	09:06	5	address of that company?
00.01	6	Q. What was your title at that point?		6	A. 1342 East Sixth Street Corona, California.
	7	A. There were really no titles.		7	Q. What is the name of the company?
	8	Q. Okay.		8	A. It's called Select Autos.
	9	A. I was just a general employee.		9	Q. If we can mark this as the first exhibit.
09:04	10	Q. Where did you work at that time?	09:06	10	(EXH-1)
0,.01	11	A. At Riverside, California.		11	Have you spent any time preparing for this
	12	Q. Do you remember the street address for the		12	
	13	- •			deposition? A. No.
		CreditSmarts office?		13	
09:04	14 15	A. 5029 LaMart Drive.	09:07	14	Q. Have you talked to any we had some
U 2 • U 4	16	Q. When did you start working for CreditSmarts?	09.0/	15 16	conversations to set up the schedule for the
		A. 2009. O. Wore you woulding at the LeMont address the		16 17	deposition
	17	Q. Were you working at the LaMart address the		17	A. Uh-huh.
	18	entire time you were working for CreditSmarts?		18	Q correct?
00.04	19	A. I believe so, yes.	00.07	19	Did you talk to Mr. Hayes before the deposition
09:04	20	Q. And did you ever have, sort of, an official	09:07	20	to
	21	title while you were working at CreditSmarts?		21	A. I spoke to Mr. Hayes briefly. I spoke to Sean
	22	A. No, I don't believe so.		22	Ryan briefly, and I spoke to you on several occasions.
	23	Q. How old are you?		23	Q. Okay. Did your discussions with Mr. Hayes
00.01	24	A. I'm 35 years old.	00.05	24	refresh your recollection at all about the events and
09:04	25	Q. And how did you come to work for CreditSmarts?	09:07	25	circumstances about this case?

		Page 10			Page 12
09:07	1	A. Not very much, no. I wouldn't say that.	09:10	1	this time period to get this fax for him.
	2	Q. How about your discussions with Mr. Ryan?		2	Do you have any recollection of such a
	3	A. Same.		3	conversation?
	4	Q. I'm going to show you the first exhibit. Take		4	A. Just from looking at this e-mail, I see there
09:07	5	as much time as you need to refer to it, but my first	09:10	5	was an e-mail conversation.
05.07	6	question is just whether you recognize this document,	03.10	6	Q. Okay.
	7	which looks like a string of e-mails?		7	A. Other than that, no.
	8	A. I recognize the company name. The rest of the		8	Q. How about a vocal face-to-face type of
	9	document no, I don't recollect specifically.		9	discussion?
09:08			09:11	10	A. No.
09.00	10	Q. Okay.	09.11	11	
	11 12	A. CreditSmarts phone number.		12	Q. If you had to get a fax for Mr. Ryan while you
		Q. Do you recall the image that's on the front			were working at CreditSmarts, do you know how you would
	13	part of the e-mail that looks to be an ad for Up2Drive?		13	have done that?
00.00	14	Do you recall ever seeing that part of the e-mail	00.11	14	A. Not really. I don't recall where we kept the
09:08	15	before?	09:11	15	faxes, if we kept them at all.
	16	A. The BMW vehicle?		16	Q. What was your role in faxing at CreditSmarts?
	17	Q. Well, the whole part that's embedded on the		17	That is, when you were involved in faxing, what did you
	18	first e-mail, I imagine, all the way down to the "Join		18	do?
	19	Now" and the text at the bottom before your name.		19	A. My role at CreditSmarts really didn't involve
09:08	20	A. Not specifically.	09:11	20	faxing, for the most part. It was occasionally that I
	21	Q. Okay. Do you recall sending an e-mail to Sean		21	would be involved in the creation or, I guess, sending
	22	Ryan about this document?		22	of a fax.
	23	A. I don't recall sending this e-mail, but I do		23	Q. How would you do that? For example, do you
	24	see that it was sent from my in box.		24	remember specifically creating faxes?
09:09	25	Q. Okay. If you look at the bottom of the first	09:12	25	MR. HAYES: Objection; he's already answered that
		Page 11			Page 13
09:09	1	page and the top of the second page, there is an e-mail	09:12	1	question.
	2	from Sean Ryan to you saying, "What fax piece did we		2	MR. PIPER:
	3	send?"		3	Q. That's where you can go ahead and answer.
	4	Do you recall Mr. Ryan asking you about a fax for		4	A. I don't really understand your question.
09:09	5	the Up2Drive program sometime when you were working at	09:12	5	Q. Do you remember specifically ever creating a
	6	CreditSmarts?		6	fax at CreditSmarts?
	7	A. Not specific.		7	A. I recall working on faxes.
	8	Q. Do you have any recollection of that?		8	Q. What do you recall about working on faxes?
	9	A. No recollection. There is e-mail evidence of		9	A. No specifics. I do remember working on faxes,
09:09	10	such conversation, but I don't remember specifically.	09:12	10	occasional.
	11	Q. Okay. Did you ever create faxes to be sent for		11	Q. What did you what do you mean by "working on
	12	CreditSmarts to its customers?		12	faxes"? What were the kinds of things you did that you
	13	A. I have worked on faxes in the past.		13	remember with respect to faxes?
	14	Q. Did you ever create the faxes, that is make the		14	A. Reading them and probably sending them.
09:10	15	document that would be actually faxed to the customers?	09:12	15	Q. What did reading the faxes involve?
	16	A. I believe so.		16	A. Spell checking, proofreading.
	17	Q. Okay. Do you know whether you created the fax		17	Q. So what you recall is looking at a fax that
	18	image that's on the front page of this document?		18	somebody else had prepared? Is that what you're saying?
	19	A. Not specifically this one.		19	A. Sometimes. Sometimes I prepared it myself.
09:10	20	Q. Okay. Do you think you didn't create this or	09:13	20	Q. Okay. Did you ever send a fax that Mr. Ryan
	21	you just don't remember?		21	didn't know was going to be sent beforehand, meaning a
	22	A. I wouldn't remember either way.		22	fax advertisement, not the individual fax to an
	23	MR. GARCIA: Objection.		23	individual?
	24	MR. PIPER:		24	A. I really don't know that.
09:10	25	Q. Mr. Ryan has testified that he talked to you in	09:13	25	Q. Do you have any recollection of ever preparing

		Page 14			Page 16
09:13	1	a fax that Mr. Ryan was not aware of?	09:16	1	Q. Do you recall faxes relating to the Up2Drive
	2	A. I actually wouldn't really know what he was		2	program being sent by CreditSmarts in December of 2012?
	3	aware of.		3	A. I don't recall faxes going out to Up2Drive
	4	Q. Did you ever send a fax that he didn't tell you		4	during the period. There might have been.
09:13	5	to send?	09:17	5	Q. Do you have any knowledge about any faxes that
09.13	6	A. I don't recall.	09.17	6	were sent for Up2Drive in that period?
	7			7	
	8	Q. When you spoke to me a few weeks ago, you told		8	A. Not specifically. Q. Do you have any general knowledge about faxes
		me that you would never have sent a fax that Mr. Ryan			that were sent in that period?
00.12	9	didn't know about it.	09:17	9	•
09:13	10	Do you recall that?	09:17	10	A. That's a long time ago. I honestly can't
	11	A. I did recall talking to you and mentioning that		11	remember anything specific as far as faxes go.
	12	Sean Ryan runs the company, and that I imagine he is		12	Q. Okay. We all have memory fading over time, so
	13	aware of most things that happen in there.		13	you don't need to apologize for that. I have never met
	14	Q. Okay.		14	a witness that recalled everything.
09:13	15	A. The specifics of faxing, I'm not aware of.	09:17	15	A. Okay.
	16	Q. Okay. When you talked to Mr. Hayes, did he		16	Q. But on the other hand, you know, I don't know
	17	encourage you to say you didn't remember things if you		17	what I had for lunch on December 4th, 2012, but I know I
	18	didn't have a specific recollection?		18	did have lunch. But there are degrees of recollection
	19	A. No.		19	and probability and specificity.
09:14	20	Q. Let's mark the next two exhibits. I'm showing	09:18	20	When you say I don't recall with specificity, that
	21	you two exhibits. [EXH-2] [EXH-3]		21	leaves a blank which is that you remember something
	22	MR. GARCIA: I'm sorry, which is number		22	general, and then it's my burden to figure out if you're
	23	MR. PIPER: Number 2 has the header of 12-4-12.		23	holding something back or telling me everything you
	24	MR. GARCIA: Okay.		24	remember.
09:15	25	MR. PIPER: Number 3 has the header of 12-27-12.	09:18	25	So what I'm trying to say: Do you remember
		Page 15			Page 17
09:15	1	MR. GARCIA: Thank you.	09:18	1	anything at all, specific or general?
	2	MR. PIPER:		2	A. I do not recall.
	3	Q. For your benefit, Mr. Gomez, to my knowledge,		3	MR. GARCIA: I'm going to object to the instruction
	4	the only difference between these two documents is the		4	that the client answer something that probably happened.
09:15	5	headers at the top, the fax headers on the	09:18	5	MR. PIPER: Right. He can object to that.
	6	MR. HAYES: This is the one.		6	Q. You can answer because this a discovery
	7	THE WITNESS: The dates, I see that.		7	deposition. Whether it's admissible evidence will be
	8	MR. PIPER:		8	decided later. So my question let me finish my
	9	Q. Okay. Do you recognize either of these		9	question first and strike all the instructions.
09:16	10	documents?	09:18	10	My question is: Do you have any recollection at
0, 10	11	A. Seems to be the same document from the e-mail.		11	all about faxes concerning the Up2Drive program that
	12	Q. Do you recognize them other than they're faxes		12	were sent in November or December of 2012?
	13	that they're in the e-mail?		13	A. No.
	14	A. No.		14	Q. And I'm going to ask some follow-up questions
09:16			09:19	15	
09.10	15	Q. Did you create these documents?	09.19		just to make sure. You don't know anything about how
	16	A. I don't recall if I did.		16	many faxes were sent?
	17	Q. Is it possible that you did create them?		17	A. No.
	18	MR. GARCIA: Objection.		18	Q. You don't know anything about who prepared the
	19	THE WITNESS: I don't know.	00.7.	19	fax?
09:16	20	MR. PIPER:	09:19	20	A. No.
	21	Q. Do you know whether you had access to the		21	Q. You don't know anything about who sent the fax?
	22	Up2Drive logo as part of your job at CreditSmarts?		22	A. No, I do not.
	23	MR. GARCIA: Objection.		23	Q. You don't know how they were sent, whether it
-	24	THE WITNESS: I don't recall that.		24	was through the company fax machine or through the faxes
		MR. PIPER:	09:19	25	that were even sent or through broadcast or like the

		Page 18			Page 20
00.10	1		00.21	1	
09:19	1	WestFax Company?	09:21	1	Q. Right.
	2	A. I don't recall.		2	A I don't recall the specifics of that one.
	3	Q. Do you recall being involved in any marketing		3	Q. Okay. Does this look like one of those
	4	of the Up2Drive program?		4	updates?
09:19	5	A. No specifically Up2Drive.	09:21	5	A. It looks like a program update.
	6	Q. Okay. Meaning you did send faxes from time to		6	Q. Did you have any knowledge of the Up2Drive
	7	time marketing CreditSmarts services, but you don't		7	program as a CreditSmarts program?
	8	remember if that included Up2Drive. Is that essentially		8	A. I understand that they are a CreditSmarts
	9	what your answer is?		9	partner.
09:19	10	A. The faxes was something that we used in a very	09:22	10	Q. That's something you understood when you were
	11	limited fashion. Most of our marketing was conducted		11	working at CreditSmarts?
	12	over the phone.		12	A. Yes, we had multiple partners.
	13	Q. My question is phone marketing, fax marketing,		13	Q. What did you understand about Up2Drive as best
	14	internet or anything, do you remember being involved in		14	you recall?
09:20	15	doing anything that involved the Up2Drive program?	09:22	15	A. They were one of our lenders.
	16	A. Not specifically Up2Drive.		16	Q. Do you recall how you became aware of that?
	17	Q. Okay. You were involved in marketing, but you		17	Were you aware when they signed up to be a lender of
	18	don't specifically recall Up2Drive?		18	CreditSmarts?
	19	A. We primarily market our software.		19	A. I first became aware of Up2Drive once they were
09:20	20	Q. Okay. Did you ever work with web faxing	09:22	20	already signed up.
	21	program called or vendor called WestFax?		21	Q. Did you have any involvement in the business
	22	A. It does sound familiar, WestFax.		22	relation between CreditSmarts and Up2Drive?
	23	Q. Do you have any recollection of actually		23	A. No.
	24	sending faxes through WestFax yourself?		24	Q. Did you ever have any responsibilities that
09:20	25	A. I remember using WestFax.	09:22	25	were specifically about dealing with them?
		Page 19			Page 21
09:20	1	Q. Okay. What do you recall about using WestFax?	09:22	1	A. I never had any contact with Up2Drive directly.
	2	A. Can you how do you mean?		2	Q. Did you have to help set up the internet? Did
	3	Q. Well, do you recall specifically using WestFax		3	you have any role setting the internet connections
	4	to send faxes?		4	between Up2Drive and the CreditSmarts portal?
09:20	5	A. That's the only purpose of WestFax, from what I	09:23	5	A. No.
	6	can tell.		6	Q. Did you ever get invoices from WestFax for
	7	Q. Is that what you remember, that you used the		7	faxes that were sent by CreditSmarts?
	8	WestFax?		8	A. Not at that time I dealt with.
	9	A. WestFax was a fax portal.		9	Q. Okay. Did you ever send updates on your own
09:21	10	Q. You recall using that to send one or more faxes	09:23	10	initiative, that is you're the one that came up with the
	11	yourself?		11	idea to send the update and that you went ahead and did
	12	A. Uh-huh.		12	it without Mr. Ryan
	13	Q. Do you have any idea how many times you did		13	A. I don't recall that.
	14	that?		14	Q. Meaning to the best of your recollection, you
09:21	15	A. No.	09:23	15	didn't do that?
	16	Q. Were you the person who mainly sent the product		16	MR. GARCIA: Objection.
	17	update faxes to customers?	l	17	THE WITNESS: I repeat. I don't recall this, one
	18	A. I did some. Whether there were other people		18	way or the other.
	19	doing it, I'm not really sure.		19	MR. PIPER:
09:21	20	Q. Do you recall how often you did that?	09:23	20	Q. Okay. So do you think it's possible that you
	21	A. No, very rarely.	l	21	just got the idea to send an Up2Drive fax on your own
	22	Q. Again, do you know whether this is one of those	l	22	MR. HAYES: Objection.
	23	updates that CreditSmarts would send its customers?	l	23	MR. GARCIA: Objection.
	24	A. This faxing in particular, if you are referring		24	MR. PIPER:
09:21	25	to the document you showed me	09:24	25	Q without talking to Mr. Ryan about it and

		Page 22			7 (1dges 22 co 23)
09:24	1	sending it without his knowledge?	09:26	1	like, Exhibit 2 or Exhibit 3
09.24	2		09.20	2	A. Uh-huh.
	3	A. I couldn't answer that accurately. Honestly, I		3	Q and then you also upload a list of fax
	4	don't remember. Q. Okay. But my question: Is that something		4	numbers?
09:24	5		09:26	5	
09.24	6	given your normal business practices that you	09.20	6	When you say you would have most likely uploaded the document, do you mean the image to be faxed or the
	7	A. I wouldn't think so		7	numbers or both?
	8	Q you would have done? A but I'm not sure either way.		8	A. Probably both.
	9	Q. Okay. Did you consider sending out updates to		9	Q. Do you know where those numbers came from?
09:24	10	be an important event when you did it?	09:27	10	When faxes were sent through WestFax to phone numbers,
09.24	11	A. I don't	03.27	11	do you know where the list of phone numbers came from?
	12	MR. GARCIA: Objection.		12	A. Honestly, I don't recollect where that would
	13	THE WITNESS: Our updates in our company were done		13	be.
	14	daily in every communication with our customers.		14	Q. Do you recall if that if those numbers came
09:24	15	MR. PIPER:	09:27	15	from the customer database?
09.24	16	Q. But fax is an update to thousands of people.	03.27	16	A. Most likely, I believe so.
	17	Did you consider that an important activity?		17	Q. Did you have the ability to get a list of fax
	18	MR. HAYES: Objection.		18	numbers from the customer database yourself?
	19	MR. GARCIA: Objection.		19	A. I had access to all the numbers on the database
09:24	20	THE WITNESS: Honestly, I don't recall doing such a	09:27	20	individually.
05.21	21	thing.	03.27	21	Q. Do you have the ability to create the file that
	22	MR. PIPER:		22	would have fax numbers for some set of customers? Like,
	23	Q. Okay. You don't recall sending a fax to		23	say you want to send a fax to the everybody in the
	24	thousands of people?		24	eastern United States, would you have the ability to
09:25	25	A. Or updating people in that fashion.	09:27	25	create that kind of list from the database?
			\vdash		
		Page 23			Page 25
09:25	1	Q. Okay. Why don't we mark this next in order.	09:27	1	A. I don't recall if that tool was available.
	2	When you did faxing through WestFax, do you recall		2	Q. Do you know who at CreditSmarts would have been
	3	how you did that? Do you recall what the steps were to		3	the person who could have done that for you?
	4	sending a fax through WestFax? [EXH-4]		4	A. Probably our IT department.
09:25	5	A. No, I think it's a pretty simple process.	09:28	5	Q. Who were the people in the IT department?
	6	Q. Do you recall that you had to upload a list of		6	A. We outsourced IT. So you would have to ask
	7	fax numbers as part of that process?		7	Sean Ryan probably about that.
	8	A. I believe you did have to put in the phone		8	Q. Would that have been the company that
	9	numbers or the fax numbers of those who you wished to	l	9	maintained the database or was that
09:26	10	receive your communication.	09:28	10	A. That is an area of the company I'm not really
	11	Q. And did you ever do that? Did you ever upload		11	very much aware of.
	12	fax numbers on WestFax?		12	Q. Did you ever go to the IT people and ask them
	13	A. I don't recall doing that.		13	for a list of fax numbers to use for faxing?
00.06	14	Q. Okay. Do you know who did that at any point in	00.20	14	A. They were not in the location where I was at,
09:26	15	time for any of the faxes that were sent through	09:28	15	and no communication was really ever conducted between
	16	WestFax?		16	me and them.
	17	A. No, I don't recall that.		17	Q. Okay. If communication was done to get a list
	18	Q. When you were involved in sending a fax, would		18	of fax numbers so that you could send a fax from
09:26	19	you have done the uploading on the WestFax yourself or	09:28	19 20	WestFax, do you recall who made that communication?
09.20	20 21	would you have asked somebody else to do that or would	09.20	20 21	A. I wouldn't really know. Q. Do you know if Sean Ryan ever made that
	22	it vary from one fax to another?		22	Q. Do you know it Sean Ryan ever made that communication?
	23	A. I would have most likely uploaded what we wished to share.		23	A. You would have to ask him that.
	23	Q. Meaning the as I understand with WestFax,		24	A. You would have to ask nim that. Q. Unfortunately, he says you did it.
09:26	25		09:29	25	MR. HAYES: Objection.
■ U フ • Z D	∠5	you upload an image you want to fax, which might be,	02.43	45	MIK. 11A I ES. OUJECHOII.

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		Page 26			Page 28
09:29	1	MR. PIPER: That's, sort of, the quandary on that.	09:33	1	you were working there?
	2	MR. HAYES: Objection. Could we go off the forward		2	A. Our numbers varied due to the fact that we had
	3	for a second?		3	a call center. So it's a high turnaround turnover.
	4	(A discussion is held off the record.)		4	I would say probably, including me and Sean, eight, nine
09:29	5	MR. PIPER: Back on the record. Let me show you	09:33	5	at any one time.
	6	Exhibit 4. Did you all get Exhibit 4?		6	Q. Was Mr. Ryan in the office often?
	7	MR. GARCIA: Yes.		7	A. He was there a lot, yes.
	8	MR. HAYES: Uh-huh.		8	Q. Okay. And would it be fair to say that little
	9	MR. PIPER:		9	happened at the office that Mr. Ryan wasn't aware of?
09:29	10	Q. Do you recognize that document?	09:34	10	A. There was a lot that happened in the office
	11	A. No, sir, I don't.		11	that he wasn't aware of.
	12	Q. Have you ever seen a WestFax bill such as this?		12	Q. Do you recall telling me that nothing happened
	13	A. No, I have not.		13	that Mr. Ryan was not aware of?
	14	Q. Okay. Do you recall that Mr. Ryan would go on		14	A. Probably nothing that requires a bill.
09:30	15	a vacation trip to the racetrack after Christmas each	09:34	15	Q. So would it be your testimony that because
	16	year?		16	there were bills sent for these faxes, Mr. Ryan would
	17	A. I'm not really aware of that.		17	have been aware of it?
	18	Q. Okay. Were you aware that he'd be out of the		18	A. I really don't know that. I have never seen
	19	office for a couple of days after Christmas each year?		19	these bills personally.
09:30	20	A. Not specifically.	09:34	20	Q. Did he generally review bills before they were
	21	Q. Okay. Okay. I'm going to show you two other		21	paid?
	22	documents. Going back to Exhibit 4, do you have this		22	A. You would have to ask him that.
	23	refers, under "Item Description," to "Broadcast Fax Per		23	Q. But in your experience, did you see him
	24	Page Normal CreditSmarts Date 12-27-2012." There is a		24	reviewing billings?
09:31	25	job number. The name is "BMW fax 12.27.12." And this	09:34	25	A. I never seen him pay a bill.
		Page 27			Page 29
09:31	1	says, "Super List Billing Code."	09:34	1	Q. Okay. You don't mean by that that he didn't
	2	Do you have any knowledge of a fax concerning BMW		2	pay his bills?
	3	that was sent by CreditSmarts about December 27, 2012?		3	A. I would imagine he did since he's still there
	4	A. I have no recollection of such a fax.		4	today.
09:32	5	Q. Then I'm going to show you 5 and 6, which are	09:34	5	Q. Okay. Who at CreditSmarts had the
	6	other invoices from WestFax.		6	responsibility to review bills?
	7	One of them refers to a BMW fax with a date of		7	A. Not me, and I wouldn't know who actually did
	8	12-4-12 and the other refers to a BMW fax for the date		8	that.
	9	of November 29th, 2012. [EXH-5] [EXH-6]		9	Q. You never had to go to somebody to ask for a
09:32	10	Do you have any knowledge of faxes concerning BMW	09:34	10	check to be cut?
	11	sent on about November 29th, 2012 or December 4th, 2012?		11	A. No.
	12	A. Not specifically.		12	Q. What did you do other than once in a while
	13	Q. Do you remember when we talked by phone that		13	sending a fax?
	14	you said that Mr. Ryan micromanaged the company?		14	A. My primary job was to support the staff and to
09:32	15	A. He's the owner of a small business.	09:35	15	make sure that everybody showed up every day.
	16	Q. Do you recall that you told me that he		16	Q. Okay. What did you do to support the staff?
	17	micromanaged the company?		17	A. Make sure that I accommodate their needs,
	18	A. Whether I used that word specifically, I	l	18	training, monitoring activity.
	19	wouldn't be able to recall. But as a business owner, I	l	19	Q. Nobody ever told you you were the office
09:33	20	I'm involved in most areas of my own business.	09:35	20	manager there?
	21	Q. Okay. And Mr. Ryan was heavily involved in all		21	A. I don't believe we ever had a title while I was
	22	areas of activities of CreditSmarts?		22	there.
	23	A. I believe so. You will have to ask him the	l	23	Q. Mr. Ryan never told you you were the office
	24	specifics.	l	24	manager?
09:33	25	Q. How many people were working at the office when	09:35	25	A. From what I recall, Mr. Ryan doesn't really

		Page 30			Page 32
09:35	1	like to use titles very much.	09:38	1	Q. How did that vary?
03.33	2	Q. Was there somebody in charge of accounts at the		2	A. We
	3	company?		3	Q. You moved from one office to the other?
	4	A. I wouldn't really know. I was never really		4	A. We played with the space to accommodate our
09:35	5	involved with the financial side of the company. So I'm	09:38	5	needs at the time.
0,700	6	not sure who took care of that.	03.30	6	Q. But other than you, Mrs. Ryan and Mr. Ryan, was
	7	Q. Was there someone that you understood was the		7	there anybody employed at CreditSmarts that was assigned
	8	accounting person or the books and records person?		8	an office, as best you can recall?
	9	A. No. My main focus was on the call center.		9	A. From time to time there had been people in
09:36	10	Q. Okay.	09:38	10	offices other than us three.
09.30	11	A. Anything outside of that spectrum, I wouldn't	03.30	11	Q. Okay. Who do you recall? Do you recall
	12			12	anybody that was there?
	13	know. Q. Who were the employees in December of 2012		13	A. Previous employees.
	14	outside the call center?		14	Q. Do you recall any of their names?
09:36	15	A. Outside the call center?	09:38	15	A. Honestly, no.
09.30	16		09.30	16	Q. And do you have any idea what Mrs. Ryan did
	17	Q. Besides you and Mr. and Mrs. Ryan?		17	when she was working there?
	18	A. We had our IT staff, which I don't know them		18	
		specifically since I had no dealing with them. And any		19	A. No. O. If you look at Exhibits 4, 5 and 6, do you see
00.26	19	other person not in the office, I really don't know who	09:39		, , , ,
09:36	20	they were.	09.39	20 21	the column called, "Quantity," and for the BMW fax
	21 22	Q. Were the IT staff there in the office?		22	entries, November 29th is 5,480, November
		A. No.			December 4th is 5,107 and December 27 is 10,420? Do you
	23	Q. So other than you and Mr. and Mrs. Ryan, was		23	know if you have sent a fax broadcast through WestFax
00.26	24	there anybody there in the office that was not part of	09:39	24 25	that was that large in terms of the number of people
09:36	25	the call team?	09.39		that were going to receive the fax?
		Page 31			Page 33
09:36	1	A. No.	09:39	1	A. I wouldn't really recall that specifically.
	2	Q. And did what did Mrs. Ryan do? What was she		2	Q. Do you recall whether that was a large fax or
	3	responsible to?		3	small fax relative to the faxing broadcasting that
	4	A. She did not report to me. I'm not really sure		4	CreditSmarts did through WestFax?
09:37	5	what her role is.	09:40	5	A. Seems like a very large number, but I wouldn't
	6	Q. Did you have to work with her?		6	know how it compares to average.
	7	A. No.		7	Q. Does it strike you as likely that you would
	8	Q. Did she have her own office?		8	have sent a fax to that very large number without making
	9	A. She had her own space.		9	sure it was okay with Mr. Ryan?
09:37	10	Q. How was the office set up? How many were	09:40	10	MR. GARCIA: Object to the last response.
	11	there internal offices?		11	THE WITNESS: I wouldn't know.
	12	A. It's a larger area complimented by four little		12	MR. PIPER:
	13	offices.		13	Q. Do you have any recollection of deciding let's
	14	Q. Okay. And who had the four little offices?		14	do a fax that's much larger than usual?
09:37	15	A. One of the offices had a multi purpose	09:40	15	A. I don't recall making a decision like that.
	16	multiple desks. I would use it. Sean would use it		16	Q. Okay. Do you recall ever learning while you
	17	Ms. Ryan would use it. Guests would use it. The call		17	were at CreditSmarts, there was a lawsuit that had been
	18	center was specifically for the call center. And one		18	filed about a fax that CreditSmarts had sent?
	19	office was used as a break room.		19	A. I recall something about the lawsuit, yeah.
09:37	20	Q. Okay. So you, Mr. Ryan and Mrs. Ryan each used	09:41	20	Q. Do you recall telling Mr. Ryan that you would
	21	offices and the fourth one was used as the break room?		21	resign your position because you had sent a fax without
	22	A. Uh-huh, no, that varied during my time there.		22	his permission?
	23	Q. What varied?		23	A. No.
	24	A. The location of the break room, the location of		24	Q. Do you recall telling Mr. Ryan that you would
09:38	25	my office.	09:41	25	resign your position because you had sent an e-mail

		Page 34			Page 36
09:41	1	without his permission?	09:44	1	A. 100 percent.
05-11	2	A. No.		2	Q correct?
	3	Q. Did you hear about any employee that sent a fax		3	She hasn't complained, but it's better for her if
	4	broadcast without Mr. Ryan's permission?		4	you wait until the end of the question.
09:41	5	• •	09:45	5	You have no idea what salesperson might have
09.41	6	A. Not specific.	09.43	6	
	7	Q. Did you ever hear about any employee, other than yourself, who had sent a fax broadcast without		7	offered their resignation in MR. GARCIA: Objection.
				8	MR. PIPER:
	8 9	Mr. Ryan's permission and was in trouble because of		9	
09:41	10	that?	09:45	10	Q August of 2013?
09.41		A. I don't recall that, no.	09.45		A. I don't see any specifics to a person there.
	11	Q. Okay. Let me mark the next exhibit. Have you		11	Q. Who were the sales people at CreditSmarts in
	12	ever seen this e-mail before? [EXH-7]		12	August 2013?
	13	A. No, I have not.		13	A. Everybody at CreditSmarts conducted sales at
00.40	14	Q. Does this refresh any recollection on your part	00.45	14	some level.
09:42	15	that you talked to Mr. Ryan about sending something out	09:45	15	Q. Okay. But were you aware that any sales person
	16	concerning Up2Drive without his permission when he was		16	in August 2013 had offered their resignation to
	17	out of town?		17	Mr. Ryan?
	18	A. No. I have actually never seen that name of		18	MR. HAYES: Objection. John, that's the fourth
	19	the recipient before.		19	time you've asked that question in the last 90 seconds.
09:42	20	Q. Okay. This is Exhibit 8. Have you ever seen	09:45	20	THE WITNESS: I don't recall that particular time
	21	this before? [EXH-8]		21	frame. Since we have a high turnaround on staffing,
	22	A. No. It seems a follow-up from the previous		22	there are people leaving all the time.
	23	document.		23	MR. PIPER:
	24	Q. Yeah, in fact, the previous e-mail is at the		24	Q. Okay.
09:43	25	bottom of the page.	09:45	25	A. If it was specifically regarding to this, I
		Page 35			Page 37
09:43	1	A. Uh-huh.	09:46	1	wouldn't know.
	2	Q. Did you offer your resignation to Mr. Ryan in		2	Q. Were you ever aware that any salesperson
	3	August of 2013 and he refused it?		3	offered their resignation because they had done
	4	A. No.		4	something unauthorized and Mr. Ryan refused to accept
09:44	5	Q. Do you have any idea what he's referring to	09:46	5	the resignation?
	6	there when he says, "The salesperson that did this has		6	A. If that conversation took place, I was not a
	7	offered his resignation which as of today, and I have		7	part of it.
	8	refused"?		8	Q. You did not hear about it from Mr. Ryan
	9	A. I actually wouldn't know what that specifically		9	A. No.
09:44	10	refers to.	09:46	10	Q or anybody else?
	11	Q. Okay. But, to your knowledge, you're not the		11	Did you know that CreditSmarts had a Facebook page?
	12	sales person that he's talking about?		12	A. No.
	13	A. I have never offered my resignation, especially		13	Q. Did you have any involvement in a CreditSmarts
	14	not at that time frame.		14	Facebook page?
09:44	15	Q. You offered your resignation a couple months	09:46	15	A. I wasn't aware of such a page.
	16	later when you decided to start a new job but not before		16	MR. GARCIA: Objection.
	17	then?		17	MR. PIPER:
	18	A. It wasn't an offer. I stated my intentions to		18	Q. Did you become aware at any point that was an
	19	leave.		19	issue; that there were advertisements for the Up2Drive
09:44	20	Q. So resigned a couple months later, but you	09:46	20	program on the CreditSmarts Facebook page?
	21	never offered your resignation before that?		21	MR. GARCIA: Objection.
	22	A. When I chose to move to from CreditSmarts, it		22	THE WITNESS: I just learned about the Facebook
				23	page. I wouldn't know.
	23	was a statement rather than a question.		23	page. I wouldn't know.
	23 24	was a statement rather than a question. Q. And that was totally your decision; it wasn't		24	MR. PIPER:

		Page 38			Page 40
09:46	1	A. From your previous question, yes.	09:50	1	A. What do you mean?
	2	Q. You just learned about it during the deposition		2	Q. Were you familiar with the term "program
	3	today?		3	update" as something that was sent by fax at
	4	A. Yes.		4	CreditSmarts?
09:47	5	Q. Okay. Did you ever hear that BMW had	09:50	5	
09.47			09.50		A. Depends what program you're referring to.
	6	complained about anything that CreditSmarts was doing in		6	Q. Okay. But is the term "program update"
	7	marketing the Up2Drive program?		7	something that
	8	A. I have never had communication with BMW, so I'm		8	A. Well, program update could be referring to
00.45	9	not aware of that.		9	software update as well. We made many advances on our
09:47	10	Q. Did you ever hear that from Mr. Ryan, that BMW	09:50	10	software that we constantly updated our customer base
	11	was concerned about the marketing of Up2Drive?		11	on.
	12	A. He never expressed such concern to me.		12	Q. Well, maybe I'm wrong. Maybe I used a
	13	Q. Did he ever express any directions to you about		13	different word for update.
	14	marketing for Up2Drive?		14	Is "program update" a term that you used at
09:47	15	A. No specifically.	09:50	15	CreditSmarts referring to something that was sent out to
	16	Q. Did he ever tell you that faxes should not be		16	customers?
	17	used for marketing Up2Drive?		17	A. In that particular the way you phrased that,
	18	A. I don't recall that conversation, if it ever		18	it sounds a little bit odd.
	19	took place.		19	Q. Okay. Did you have a name for the kind of
09:47	20	Q. Did he ever tell you that you shouldn't talk to	09:50	20	faxes you sent out informing customers about different
	21	anybody at BMW or Up2Drive?		21	aspect of CreditSmarts?
	22	A. I have never been told that before.		22	A. I don't think we had a name.
	23	Q. Other than the customers' database that you		23	Q. Do you recall any one person at CreditSmarts
	24	would draw numbers from to send faxes to, are you aware		24	who had responsibility for sending marketing faxes?
09:48	25	of any other lists that CreditSmarts had access to for	09:51	25	A. No, there wasn't a person in charge of that.
		Page 39			Page 41
09:48	1		09:51	1	
09.40	1 2	preparing lists of fax numbers to send faxes to? A. No.	09.31		Q. This is a slightly narrower version of
				2	something I asked earlier. Did you ever have a
	3	Q. Other than yourself, do you know anyone at		3	conversation with Mr. Ryan where he told you that the
00.40	4	CreditSmarts that did send faxes through WestFax?	00.51	4	only person who could talk to the Up2Drive people were
09:48	5	A. No.	09:51	5	himself and Chad Simmons?
	6	Q. Do you know if there was anyone other than		6	A. We have never had that conversation before.
	7	yourself?		7	Q. Did you have any knowledge of an e-mail that
	8	A. I wouldn't know. There was multiple people		8	Mr. Ryan sent to people on the customer database about
	9	that could do faxes.		9	Up2Drive?
09:48	10	Q. Okay. To your knowledge, were there fax	09:52	10	A. Sorry, can you repeat the question. I was
	11	updates sent through WestFax that you weren't involved		11	distracted for a second.
	12	with?		12	Q. By the way, if you need to take a break at any
	13	A. I wouldn't know if I wasn't involved in it.		13	time, we're pretty close to being done.
	14	Q. Did you ever talk to Mr. Ryan before you sent a		14	A. You can go on. That's fine.
09:49	15	fax update?	09:52	15	Q. Okay. Either to answer the phone or for
	16	A. I don't recall.		16	personal reasons.
	17	Q. Meaning you don't recall one way or the other?		17	A. We're good to continue. Thank you for your
	18	A. One way or the other.		18	concern.
	19	Q. Okay. Would he ever instruct you about sending		19	Q. Why don't you look at this and tell me if this
09:49	20	a fax?	09:53	20	looks familiar, either as a specific document or whether
	21	A. I don't recall one way or the other.		21	the contents of the document looks like something you've
	22	Q. How about Mrs. Ryan, did she have any		22	seen before? [EXH-9]
	23	involvement with that?		23	A. I can't say I recall ever seeing this before.
	24	A. Same answer.	l	24	Q. Okay. Do you know if you ever saw the Up2Drive

		Page 42			Page 44
09:53	1	A. The Up2Drive logo is something I do recognize.	09:57	1	the CreditSmarts' name?
	2	Q. How about the hands with the check, is that		2	A. I don't recall such a conversation.
	3	something that you recognize, that little graphic?		3	Q. Did you ever see the contract between
	4	A. Seems a pretty generic graphic.		4	CreditSmarts and BMW?
09:53	5	Q. Okay. Mr. Ryan has testified that he mailed	09:57	5	A. I don't believe so.
	6	this to various customers to test some e-mail software,		6	Q. Did you ever see any contracts between the
	7	and automatically it then uploaded on the CreditSmarts		7	Up2Drive program and
	8	Facebook page, which he discovered later, which he do		8	A. I don't believe I ever saw anything in that
	9	you have any knowledge of anything like that?		9	regard.
09:53	10	MR. GARCIA: Objection. I don't think that's a	09:58	10	Q. Do you have any knowledge one way or the other
	11	fact on the record.		11	as to whether people at Up2Drive knew that CreditSmarts
	12	MR. PIPER:		12	was marketing concerning Up2Drive?
	13	Q. Do you have any knowledge about an e-mail		13	A. I don't know anything about what people were
	14	A. No, I have no knowledge about this document or		14	thinking from that side.
09:54	15	the e-mail.	09:58	15	Q. Do you have any knowledge as to whether the BMW
	16	Q that Mr. Ryan sent?		16	Up2Drive people knew that there was a fax sent
	17	Do you know if you ever looked at the information		17	concerning Up2Drive?
	18	about Up2Drive do you know whether there was		18	A. I wouldn't know the answer to that question.
	19	information about Up2Drive on the CreditSmarts website?		19	Q. Why don't you mark that as the next exhibit.
09:54	20	A. I don't recall seeing information on them	09:59	20	[EXH-12]
	21	before.		21	For the record, this is an e-mail dated
	22	Q. Okay. Do you recognize this document or this		22	December 10th, 2012 between Pawan Murthy, P-A-W-A-N,
	23	information contained in it? [EXH-10]		23	M-U-R-T-H-Y, and Jaime Magpuri with a cc to Chip Strollo
	24	A. No.		24	and Jake Thompson concerning Up2Drive IUCD Marketing
09:55	25	Q. Do you recognize this document? [EXH-11]	09:59	25	Flyer.
		D- 40			D- 45
		Page 43			Page 45
09:55	1	A. Not in particular. I do recognize the phone	09:59	1	MR. GARCIA: Is that entered as an exhibit?
	2	number at the bottom.		2	MR. PIPER: It's marked as an exhibit.
	3	Q. Okay. There's evidence that this was a fax		3	MR. GARCIA: Okay.
00.7	4	that CreditSmarts sent to various customers or people in			1 (D. DVDED
09:55	_	41 1 4 1 1 1 1 1 1 1 1 1	00.50	4	MR. PIPER:
	5	the database, including my client.	09:59	5	Q. First of all, you didn't see this e-mail
_	6	Do you know whether you had any involvement in	09:59	5 6	Q. First of all, you didn't see this e-mail before, did you?
	6 7	Do you know whether you had any involvement in sending this fax around October 4th, 2012?	09:59	5 6 7	Q. First of all, you didn't see this e-mail before, did you? A. No, I have not.
	6 7 8	Do you know whether you had any involvement in sending this fax around October 4th, 2012? A. I don't recall any specifics on that.	09:59	5 6 7 8	Q. First of all, you didn't see this e-mailbefore, did you?A. No, I have not.Q. Does this trigger any recollection that in
00.56	6 7 8 9	Do you know whether you had any involvement in sending this fax around October 4th, 2012? A. I don't recall any specifics on that. Q. Based on the phone and the wording, does that		5 6 7 8 9	 Q. First of all, you didn't see this e-mail before, did you? A. No, I have not. Q. Does this trigger any recollection that in December 2012, there were any communication between
09:56	6 7 8 9	Do you know whether you had any involvement in sending this fax around October 4th, 2012? A. I don't recall any specifics on that. Q. Based on the phone and the wording, does that look like the type of document that you might have	09:59	5 6 7 8 9	Q. First of all, you didn't see this e-mail before, did you? A. No, I have not. Q. Does this trigger any recollection that in December 2012, there were any communication between Mr. Magpuri or Mr. Thompson or anyone else at BMW or
09:56	6 7 8 9 10	Do you know whether you had any involvement in sending this fax around October 4th, 2012? A. I don't recall any specifics on that. Q. Based on the phone and the wording, does that look like the type of document that you might have created when you sent faxes for CreditSmarts?		5 6 7 8 9 10	Q. First of all, you didn't see this e-mail before, did you? A. No, I have not. Q. Does this trigger any recollection that in December 2012, there were any communication between Mr. Magpuri or Mr. Thompson or anyone else at BMW or Up2Drive about marketing that was being done by
09:56	6 7 8 9 10 11	Do you know whether you had any involvement in sending this fax around October 4th, 2012? A. I don't recall any specifics on that. Q. Based on the phone and the wording, does that look like the type of document that you might have created when you sent faxes for CreditSmarts? MR. GARCIA: Objection; speculation.		5 6 7 8 9 10 11	Q. First of all, you didn't see this e-mail before, did you? A. No, I have not. Q. Does this trigger any recollection that in December 2012, there were any communication between Mr. Magpuri or Mr. Thompson or anyone else at BMW or Up2Drive about marketing that was being done by CreditSmarts for Up2Drive?
09:56	6 7 8 9 10 11 12	Do you know whether you had any involvement in sending this fax around October 4th, 2012? A. I don't recall any specifics on that. Q. Based on the phone and the wording, does that look like the type of document that you might have created when you sent faxes for CreditSmarts? MR. GARCIA: Objection; speculation. THE WITNESS: I wouldn't know either way.		5 6 7 8 9 10 11 12	Q. First of all, you didn't see this e-mail before, did you? A. No, I have not. Q. Does this trigger any recollection that in December 2012, there were any communication between Mr. Magpuri or Mr. Thompson or anyone else at BMW or Up2Drive about marketing that was being done by CreditSmarts for Up2Drive? MR. GARCIA: Objection.
	6 7 8 9 10 11 12 13	Do you know whether you had any involvement in sending this fax around October 4th, 2012? A. I don't recall any specifics on that. Q. Based on the phone and the wording, does that look like the type of document that you might have created when you sent faxes for CreditSmarts? MR. GARCIA: Objection; speculation. THE WITNESS: I wouldn't know either way. MR. PIPER:	10:00	5 6 7 8 9 10 11 12 13	Q. First of all, you didn't see this e-mail before, did you? A. No, I have not. Q. Does this trigger any recollection that in December 2012, there were any communication between Mr. Magpuri or Mr. Thompson or anyone else at BMW or Up2Drive about marketing that was being done by CreditSmarts for Up2Drive? MR. GARCIA: Objection. MR. PIPER: What is your objection?
09:56 09:56	6 7 8 9 10 11 12 13 14	Do you know whether you had any involvement in sending this fax around October 4th, 2012? A. I don't recall any specifics on that. Q. Based on the phone and the wording, does that look like the type of document that you might have created when you sent faxes for CreditSmarts? MR. GARCIA: Objection; speculation. THE WITNESS: I wouldn't know either way. MR. PIPER: Q. There's nothing that jumps out as either the		5 6 7 8 9 10 11 12 13 14	Q. First of all, you didn't see this e-mail before, did you? A. No, I have not. Q. Does this trigger any recollection that in December 2012, there were any communication between Mr. Magpuri or Mr. Thompson or anyone else at BMW or Up2Drive about marketing that was being done by CreditSmarts for Up2Drive? MR. GARCIA: Objection. MR. PIPER: What is your objection? MR. GARCIA: You're asking him if he knows if BMW
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		Page 46			Page 48
10:00	1	that in December 2012, there were any communications by	10:04	1	A. No, I have never seen this document. And some
	2	BMW or Up2Drive with CreditSmarts concerning an Up2Drive		2	of these fields I do not recognize.
	3	marketing flyer?		3	Q. Okay. This was produced what did you call
	4	A. No.		4	the did you have a term that you used for the
10:01	5	Q. Do you have any knowledge as the whether	10:04	5	customer data when you got it on the computer, what you
	6	CreditSmarts was authorized to use the Up2Drive logo for		6	called that?
	7	any purpose?		7	A. Customer profile.
	8	A. That is not something I would know.		8	Q. Customer profile.
	9	Q. Do you know whether Up2Drive provided a copy of		9	That was produced to us as a customer profile for
10:01	10	its logo to Sean Ryan for use in marketing for any	10:04	10	the plaintiff, City Select.
	11	purpose?		11	A. Uh-huh.
	12	A. You would have to ask him that.		12	Q. Is the dealer name something that would have
	13	Q. Do you know whether BMW approved any marketing		13	been included in the customer profile you saw for
	14	concerning Up2Drive by CreditSmarts?		14	CreditSmarts' customers?
10:02	15	A. I wouldn't know.	10:05	15	A. Dealer ID and dealer name were the primary
	16	Q. And do you know if BMW or Up2Drive disapproved		16	fields that we used to identify a customer.
	17	any marketing by CreditSmarts?		17	Q. Were the addresses and phone and fax numbers
	18	A. I wouldn't really know that either way.		18	and e-mail information that were included in the
	19	Q. Did you ever pull the customer database		19	customer profile that you saw?
10:02	20	information for any CreditSmarts' customers that were in	10:05	20	A. Yes.
	21	the database and see if there was something to look at		21	Q. And if a customer's fax number was known to
	22	on the computer or something to print out? That is, did		22	CreditSmarts, would that have been entered in the fax
	23	you ever look at customers and see information that was		23	field?
	24	in the database?		24	A. All this information originates from the
10:02	25	A. We did that every day. Every employee has	10:05	25	dealership.
			_		
		Page 47			Page 49
10:02	1	access to the database.	10:05	1	Q. And then is it entered by CreditSmarts people
	2	Q. Okay. Do you know where the database is		2	into the database?
	3	maintained?		3	A. The customers can sign up online themselves
	4	A. That's a question I wouldn't know the answer		4	Q. Okay.
10:03	5	to.	10:05	5	A or we can have an agent create the file on
	6	Q. Okay. So do you know the different types of		6	behalf of the dealership.
	7	fields that are contained in the database for customers?		7	Q. And if the customer provided their fax number,
	8	That is, did you see the different fields that were in		8	either through the internet or through an agent, would
	9	the database for customers when you reviewed the		9	they put that into the fax field here?
10:03	10	customer information?	10:06	10	A. Yes.
	11	A. Every customer has the same field contact		11	Q. Did CreditSmarts have any other compilation of
	12	information.		12	fax numbers of customers other than the database, to
	13	Q. If you can mark that as the next exhibit. Why		13	your knowledge?
	14	don't you review this document. [EXH-13]		14	A. To my knowledge, this was the only source of
10:03	15	Did you ever see a printout by the way, we	10:06	15	information.
	16	talked about that you've looked at customer information.		16	Q. And the to your knowledge, the fax number
	17	Did you ever print out a customer's information or		17	field would have been the same field for entering fax
	18	did you look at it solely on the computer screen?		18	numbers for every customer? That is, the profile field
	19	A. I don't recall printing it. I do recall seeing		19	stayed the same for each customer?
10:04	20	customer information on a computer on a daily basis.	10:06	20	A. A standard set up, same fields across the board
	21	Q. Do you recognize the fields that are reflected		21	for every customer.
	22	in this document to be types of fields that were		22	Q. Okay. Do you recall what the call scripts
	23	contained in the customer database?		23	were do you recall call scripts being used by the
	24	You've never seen this type of document before, I		24	people that did marketing at CreditSmarts?
10:04	25	would assume?	10:07	25	A. We used some scripting for training purposes.

		Page 50			Page 52
10:07	1		10:18	1	question is: You testified that you sent faxes through
10.07	1	Most of our calls were not scripted.	10.10		
	2	Q. Okay.		2	WestFax, rarely or occasionally? [EXH-14]
	3	A. Once you are a capable agent, then you know		3	A. Uh-huh.
10.05	4	what you're supposed to do. Scripts were not necessary.	10.10	4	Q. These invoices show faxes going through WestFax
10:07	5	Q. Do you recall whether there were any training	10:18	5	more than what I would consider occasionally. So, for
	6	or instructions about talking to customers about fax		6	example, these start at the back of it, there are
	7	advertising?		7	faxes going to more than one person on October 30th,
	8	A. Not specifically.		8	October 31st, November 1st, November 2nd, November 6th,
	9	Q. Do you recall generally anything about that?		9	November 7th, November 8th, November 20th,
10:07	10	A. Fax advertising was a very small part of what	10:19	10	November 13th, November 15th, November 16th, similarly
	11	we did. Generally speaking, that would have been their		11	December 4th, December 4th, December 6th.
	12	main focus of the that wouldn't be the main focus of		12	Do you recall faxes being sent through WestFax this
	13	the conversation.		13	frequently?
	14	Q. First you said fax advertising was a small		14	A. I don't recall the frequency of the faxes.
10:08	15	percentage of what you did. Now it sounds like that	10:19	15	Q. Did you ever send faxes several times a week
	16	would have been a major part.		16	through WestFax yourself?
	17	A. That would not have been.		17	A. I don't recall doing that.
	18	Q. So fax advertising would not have been a major		18	Q. Do you think it's likely you would have been
	19	focus of the calls with customers?		19	the person sending all these faxes?
10:08	20	A. Uh-huh.	10:19	20	A. I don't think I'm able to answer the question.
	21	Q. Do you recall if it was a focus at all with the		21	Q. Okay. Do you think it's possible you were
	22	scripts you remember seeing?		22	sending faxes frequently?
	23	A. No.		23	A. I don't recall if that was the case.
	24	Q. Do you recall if it was a focus at all with the		24	Q. Do you think this is more faxes than normal for
10:08	25	customer training?	10:20	25	CreditSmarts?
		Page 51			Page 53
10:08	1	A. Not at all.	10:20	1	MR. GARCIA: Objection.
	2	Q. And going back to the e-mail I think it's		2	MR. HAYES: Objection.
	3	the one on top there. Let me just beat a dead horse, do		3	MR. PIPER:
	4	you recall ever talking to someone named Pawan Murthy?		4	Q. You can answer.
10:09	5	A. No.	10:20	5	A. I really don't know the answer to that.
	6	Q. How about someone named Jake Thompson?		6	Q. So it's possible that throughout your career at
	7	A. No.		7	CreditSmarts, you were sending faxes every couple of
	8	Q. How about someone named Jaime Magpuri?		8	days through WestFax? Is that possible?
	9	A. No.		9	MR. GARCIA: Objection.
10:09	10	Q. Do you have any recollection of when you sent	10:20	10	THE WITNESS: I wouldn't know that.
	11	fax updates, what number of faxes were sent? You said		11	MR. PIPER:
	12	then 10,000 or 5,000 looked large.		12	Q. Did you ever get any training about any law
	13	Do you have any recollection what it would have		13	that governed fax advertising at CreditSmarts?
	14	been, a more regular number?		14	A. I don't recall.
10:09	15	A. I wouldn't know that specifically.	10:20	15	Q. Did you get any training about what you needed
	16	MR. GARCIA: Objection.		16	to do before you could send faxes for it to be lawful?
	17	MR. PIPER: Okay. Why don't you give me two		17	A. I don't recall that.
	18	minutes, just let me look over my notes to see if I		18	Q. Did you get any training that there were laws
	19	skipped anything.		19	that governed fax advertising?
10:10	20	Let's go off the record.	10:20	20	A. I don't recall.
	21	(A discussion is held off the record.)		21	Q. When you say you don't recall, do you mean you
	22	MR. PIPER: Back on the record.		22	don't recall one way or the other?
	23	Q. Why don't you look at this. You've seen some		23	A. I don't recall having training, and I don't
	24			24	
10:17			10:20		
10:17	24 25	of these yourself, but these are WestFax invoices from November, December and January 2012 to '13, and my	10:20	24 25	recall not having training. Q. Okay. Did you know that there were laws

		Page 54			Page 56
10:21	1	governing fax advertising when you worked at	10:23	1	A. Specifically know, at some point during last
10 21	2	CreditSmarts?		2	year.
	3	MR. GARCIA: Objection.		3	Q. Was it before you left CreditSmarts?
	4	THE WITNESS: Is that the end of the question?		4	A. Yes.
10:21	5	MR. PIPER:	10:23	5	Q. Who did you learn that from? Was it Mr. Ryan?
10.21	6	Q. Yes.	10 25	6	A. Yes.
	7	A. I never really thought about that.		7	Q. What did he tell you about that?
	8	Q. Okay. Did you know whether there were any laws		8	A. He mentioned there was a lawsuit involving BMW.
	9	about getting consent from people before you sent the		9	That's the extent of what I know.
10:21	10	faxes?	10:23	10	Q. Did he express any concerns to you about your
	11	MR. GARCIA: Objection.		11	past involvement in this and the circumstances leading
	12	THE WITNESS: I wouldn't know the answer to that.		12	up to the lawsuit?
	13	MR. PIPER:		13	A. I don't recall having that conversation.
	14	Q. Okay. Meaning you don't recall one way or the		14	Q. Okay. Do you recall that he told you that a
10:21	15	other?	10:23	15	fax you had sent had caused a lawsuit?
10 21	16	A. Uh-huh.	10 25	16	A. I don't recall that either.
	17	Q. Did you know whether there was language that		17	Q. Okay. When you would upload a fax onto
	18	had to be included if people didn't want to get the		18	well, what computer did you use when you were at
	19	faxes?		19	CreditSmarts?
10:21	20	A. I think it's all part of the same. Honestly, I	10:24	20	A. Company computers.
10.21	21	don't recall what the requirements are.	10.51	21	Q. Did you have a laptop that was your computer?
	22	Q. Okay. But my question is whether you knew that		22	A. We had several laptops and multiple fixed
	23	at one point? Did somebody ever explain all that to		23	stations. I used a multitude of computers.
	24	you?		24	Q. Do you recall which computers you used when you
10:21	25	MR. GARCIA: Objection.	10:24	25	uploaded the faxes to WestFax?
			H		
		Page 55			Page 57
10:21	1	THE WITNESS: You're asking me whether I had	10:24	1	A. For the full time frame I was at CreditSmarts
	2	training or somebody has sat down and explained it. I		2	or for just a particular time period?
	3	honestly don't know either way.		3	Q. Well, let's focus on December 2012, do you
	4	MR. PIPER:		4	recall where you were where your main work location
10:22	5	Q. Okay. Do you recall doing anything when you	10:24	5	was in the office?
	6	were sending faxes for CreditSmarts to make sure you		6	A. Yes
	7	were complying with the law?		7	Q. Where
	8	A. I wouldn't know.		8	A I recall.
	9	Q. When you had the discussion with Mr. Hayes, was		9	Q. Where were you in December 2012?
10:22	10	that by phone or face-to-face or both?	10:24	10	A. I had my own office. I also used the call
	11	A. By phone.		11	center, which I could actually access any of the
	12	Q. You never met with him face-to-face?		12	software from any location.
	13	A. Only today.		13	Q. Okay.
10.00	14	Q. Okay. When you met when you talked to	10.05	14	A. So specifically I wouldn't really be able to
10:22	15	Mr. Ryan before your deposition, was that over the phone	10:25	15	confirm one way or the other.
	16	or face-to-face or both?		16	Q. Okay. Will you be able to just draw a little
	17	A. Over the phone.		17	map of the office layout at CreditSmarts you recall to
	18	Q. You never met with him face-to-face before your		18	show where the different offices were?
10.00	19	deposition?	10.05	19	MR. HAYES: Objection. First of all, he's already
10:22	20	A. No. I mean, define "before."	10:25	20	described the layout. Would you like us to get you a
	21	Q. Well, when was last time you met face-to-face		21	map? MD DIDED. Well shot's fire. But I'm just trying.
	22	with Mr. Ryan?		22	MR. PIPER: Well, that's fine. But I'm just trying
	23	A. Last year.		23	to understand.
10.00	24	Q. Do you recall when you became aware that there	10.05	24	Q. So in December 2012, for example, draw a map of
10:22	25	was a lawsuit against CreditSmarts about faxing?	10:25	25	what you recall the office layout looking like and where

		Page 58			Page 60
10:25	1	your office was at that time.	10:28	1	Q. Like, were you talking to somebody, and you
10.23	2	A. Okay. That was my offices right there	10.20	2	just grabbed the computer that was in front of you?
	3	(indicating).		3	A. Pretty much.
	4	Q. And		4	Q. What was the name of the people that were doing
10:26	5	A. This is the door (indicating).	10:28	5	
10.20	6	MR. PIPER: Okay. For the record, Mr. Gomez has	10.20	6	the marketing? What did you call that team?
	7			7	A. Agents.
	8	drawn an X reflecting where his office was and drawn a line reflecting where the door was. We'll mark this as			Q. Okay. You said there was one room where the
	9	· ·		8 9	agents
10:26	10	the next exhibit. [EXH-15]	10:28		A. Call center agents.
10.20		MR. GARCIA: I will object to this.	10.28	10	Q. The call center agents. Would that be the
	11	MR. PIPER: And for the record, the exhibit is on a		11	large, sort of, L-shaped the largest room in the map
	12	sheet of yellow pad paper.		12	you drew?
	13	Q. The office that you were sitting in that's		13	A. That would be in the larger area, yes.
10.05	14	marked with an X in December 2012, did you have a laptop		14	Q. Okay. To upload files onto WestFax, you would
10:26	15	that you used in that office?	10:29	15	need to retrieve the files from somewhere to upload
	16	A. Yes, I did.		16	them; is that correct?
	17	Q. Did you have a stand-alone computer in that		17	A. I don't recall the specifics of that.
	18	office?		18	Q. Okay. Do you know where you would have
	19	A. No.		19	retrieved the files from to upload them onto the WestFax
10:27	20	Q. Do you know what became of that laptop?	10:29	20	portal?
	21	A. No, sir.		21	MR. GARCIA: Objection; asked and answered.
	22	Q. Do you recall having hard drive issues with		22	MR. HAYES: He said he didn't recall.
	23	that laptop?		23	MR. PIPER:
	24	A. I don't recall that.		24	Q. Do you know where you would have retrieved the
10:27	25	Q. You don't recall your hard drive failing on	10:29	25	files to upload?
		Page 59			Page 61
10:27	1	that laptop?	10:29	1	MR. HAYES: I thought we had the question earlier.
	2	A. I have had several laptops and several hard		2	THE WITNESS: No, I don't actually recall.
	3	drives at my stay at CreditSmarts.		3	MR. PIPER:
	4	Q. Were the hard drives internal to the laptop or		4	Q. Did you ever use a share drive at CreditSmarts?
10:27	5	did you have external hard drives?	10:29	5	A. A share drive?
	6	A. Internal.		6	Q. Right. Was there a share drive that
	7	Q. Do you know when you do you know whether you		7	A. For what purpose?
	8	have used that laptop that was in your office to upload		8	Q. That would be server or drive that anybody at
	9	faxes onto WestFax?		9	CreditSmarts could access that was maintained at
10:27	10	A. I wouldn't know that specifically.	10:30	10	CreditSmarts?
	11	Q. Do you recall when you have used any other		11	A. I don't really recall that.
	12	computers to upload faxes to WestFax?	l	12	Q. Okay. Do you know anything about a company
	13	A. Specifically, no.		13	that maintained the database for CreditSmarts?
	14	Q. You mentioned that there were was a computer		14	A. That is not an area which I was involved in.
10:28	15	accessible to the team of marketing people that you	10:30	15	MR. PIPER: I think that's all I've got at this
	16	would sometimes use because it had other software on it.	l	16	point. So now the other lawyers have a chance to ask
	17	Did I get that accurate?	l	17	you questions if they want to.
	18	A. No, that is incorrect.		18	THE WITNESS: Okay.
	19	Q. Okay. What was the other computer did you		19	MR. HAYES: Go ahead.
10:28	20	use a specific computer that had access to the internet?	10:30	20	
	21	A. All computers in the office had access to the	l	21	-EXAMINATION-
	22	internet.	l	22	
	23	Q. Why would you use the computers other than your		23	BY MR. GARCIA:
	24	laptop?		24	Q. Mr. Gomez, I want you to take a look at the
10:28	25	A. Convenience.	10:30	25	fax I'm sorry, Exhibits Number 2 and 3.

		Page 62			Page 64
10:31	1	A. Okay.	10:34	1	THE WITNESS: You're welcome.
	2	Q. Did you create these exhibits?		2	MR. HAYES: I think that Mr. Gomez did an excellent
	3	A. I don't recall doing so.		3	job asking questions. I don't have any questions.
	4	Q. Do you recall who created them?		4	MR. PIPER: Okay. I don't have additional
10:31	5	A. No.	10:35	5	questions, but let me just establish one thing for the
	6	Q. Do you recall if anyone at BMW or Up2Drive ever		6	record. Partly just to be clear because you are here
	7	asked you to create them?		7	today without a lawyer. One of the things I told you
	8	A. I have never had any dealings with Up2Drive or		8	was that if you wanted a lawyer, you were free to get
	9	BMW directly, so wouldn't know the answer to that.		9	one; is that correct?
10:31	10	Q. Okay. Thank you.	10:35	10	THE WITNESS: You did say that, yes.
	11	To your knowledge, did anyone at BMW or Up2Drive		11	MR. PIPER: And ultimately after talking to someone
	12	authorize anyone at CreditSmarts to create these		12	about it, you told me you did not want to have a lawyer.
	13	exhibits?		13	THE WITNESS: I was comfortable having a
	14	A. I wouldn't know that to my knowledge.		14	conversation with you without an attorney present.
10:32	15	Q. Similar question, do you know if anyone at BMW	10:35	15	MR. PIPER: Okay. Thank you.
	16	or Up2Drive authorized anyone at CreditSmarts to		16	(Whereupon the documents referred to are marked by
	17	transmit these exhibits?		17	the reporter as Plaintiff Exhibits 1 through 15 for
	18	A. That is not an answer that I would know.		18	identification.)
	19	Q. Okay. Do you have a record of who these		19	(The proceedings concluded at 10:35 a.m.)
10:32	20	facsimiles were transmitted to?		20	(Signature on following page.)
	21	A. No, I do not.		21	
	22	Q. Do you have any personal knowledge of who these		22	
	23	facsimiles were transmitted to?		23	
	24	A. I do not.		24	
10:33	25	Q. Prior to this deposition, did you have any		25	
		Page 63			Page 65
10:33	1	discussions with Mr. Piper who's counsel for the		1	***
	2	plaintiff in this case?		2	
	3	A. I have had several conversations with		3	I declare under penalty of perjury under the laws
	4	Mr. Piper.		4	of the State of California that the foregoing is true
10:33	5	Q. Do you recall approximately how many?		5	and correct.
	6	A. Three to four.		6	
	7	Q. Okay. Did these conversations address more		7	Executed at, California,
	8	than just the scheduling of this deposition today?		8	on
	9	A. Yes.		9	
10:33	10	Q. What other topics did Mr. Piper ask you about?		10	
	11	A. We discussed what this deposition may involve.		11	
	12	Q. Is there anything else?		1.0	ALEJANDRO GOMEZ
	13	A. Not that I can do recall.		12 13	
	14	Q. Do you recall any specific questions he may		14	
10:34	15	have asked you?		15	
	16	A. No, nothing specific.		16	
	17	Q. Okay. The CreditSmarts database that we		17	
	18	referred to that you said you used on a daily basis, the		18	
	19	entities that were included in that database, were those		19	
10:34	20	individuals or businesses?		20	
	21	A. Businesses.		21	
	22	Q. Exclusively businesses?		22	
	23	A. To the best of my knowledge, yes.		23	
10.04	24	MR. GARCIA: I don't have any other questions.		24	
10:34	25	Thank you.		25	

	Page 66	
1	STATE OF CALIFORNIA) ss	
2	STITE OF CLEAR CHILATION	
3	I, Diana Austin, CSR 7375, do hereby declare:	
4	-,,,	
5	That, prior to being examined, the witness named in	
6	the foregoing deposition was by me duly sworn pursuant	
7	to Section 2093(b) and 2094 of the Code of Civil	
8	Procedure;	
9		
10	That said deposition was taken down by me in	
11	shorthand at the time and place therein named and	
12	thereafter reduced to text under my direction.	
13	·	
14	I further declare that I have no interest in the	
15	event of the action.	
16		
17	I declare under penalty of perjury under the laws	
18	of the State of California that the foregoing is true	
19	and correct.	
20		
21	WITNESS my hand this day of	
22	,	
23		
24		
	Diana Austin, CSR 7375	
25		

City Select Auto Sales Inc. v. BMW Bank of North America, Inc.



lob: 508441



Sean Ryan

From:

Alex Gomez <agomez@creditsmarts.com>

Sent:

Thursday, August 08, 2013 9:12 AM

To: Subject: 'Sean Ryan' RE: RE: MSA

Importance:

High



BMW Bank of North America Up drive

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Alex Gomez Tel 888-345-0918 Fax 888-343-9903

CreditSmarts Corporation agomez@CreditSmarts.com mailto:agomez@CreditSmarts.com www.CreditSmarts.com

From: Sean Ryan [mailto:sryan@creditsmarts.com]

Sent: Thursday, August 08, 2013 7:01 AM

REPORTER D. Austin
DEPONENT A. Gomez
DATE May 19, 2014

To: agomez@creditsmarts.com Subject: Fwd: RE: MSA

What fax piece did we send?

Sean Ryan Creditsmarts.com 888-345-0918 x 307 Sryan@Creditsmarts.com "Where Finance Gets Done"

----- Original message -----

From: Jake.Thompson@bmwfs.com Date: 08/08/2013 5:30 AM (GMT-08:00)

To: sryan@creditsmarts.com

Subject: RE: MSA

Things are good, business is going well this year.

I do need to discuss a piece of fax marketing you guys are doing; do you have some time tomorrow?

Jake.

From: Sean Ryan [mailto:sryan@creditsmarts.com]

Sent: Wednesday, August 07, 2013 6:40 PM **To:** Thompson Jake, SF2-US-AP-4

Subject: RE: MSA

I will grab it. How are things?

Sean Ryan

CreditSmarts.com

888-345-0918 ext. 307

sryan@creditsmarts.com

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1) notify us by returning it to the sender and	
2) delete this copy from your computer system.	

From: Jake.Thompson@bmwfs.com [mailto:Jake.Thompson@bmwfs.com]

Sent: Wednesday, August 07, 2013 2:17 PM

To: sryan@creditsmarts.com

Subject: MSA

Sean,

Will you send me a copy of the MSA we have in place? It looks like our version is missing a page.

Thanks,

Jake.

up2drive a division of BMW Bank of North America

Jake Thompson Online Business Manager

5550 Britton Parkway Hilliard, OH. 43026 Phone: (614)-718-6995 Fax: (614)-453-3425 mailto:jthompson@up2drive.com Url: http://www.up2drive.com

No virus found in this message. Checked by AVG - <u>www.avg.com</u>

Version: 2013.0.3392 / Virus Database: 3209/6557 - Release Date: 08/06/13

No virus found in this message. Checked by AVG - <u>www.avg.com</u>

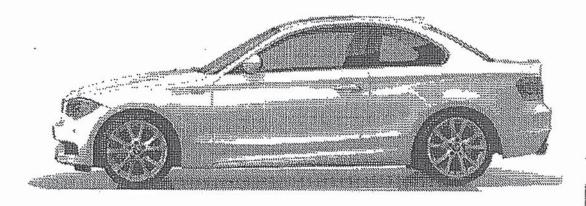
Version: 2013.0.3392 / Virus Database: 3209/6559 - Release Date: 08/08/13

City Select Auto Sales Inc. v. BMW Bank of North America, Inc.



'ob: 508441





BMW Bank of North America

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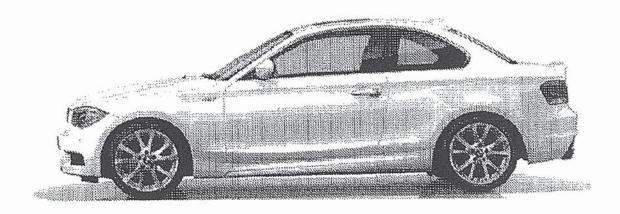


lob: 508441









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your BUSINESS !!

110% of (KBB) Retail value

2006 and newer vehicles

Up to 90,000 miles

EXHIBIT 3

REPORTER D Aushin

DEPONENT A. Gomez

DATE May 19, 2014

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WON NIOL

City Select Auto Sales Inc. v. BMW Bank of North America, Inc.



ob: 508441





BILL TO:

Credit Smarts Corporation Attn: Sean Ryan 231 East Alessandro Blvd Suite 488A Riverside, CA 92508

REMIT TO:

10465 PARK MEADOWS DRIVE SUITE 200 LONE TREE, CO 80124

TEL: (303) 299-9329 FAX: (303) 299-9309

Invoice

ACCOUNT NUMBER	DATE	INVOICE#	
4041	12/30/2012	1157764	

		Net 30
ITEM DESCRIPTION	QUANTITY	AMOUNT
Broadcast Fax Per Page Normal CREDSMAR - Date: 12/27/2012 Job: BFX-26095188 Name: BMW Fax 12.27.12 - Super List Billing Code:	10,40	2.0 \$416.08
RE DE		ustin somez 19. 2014

Please Include your invoice number on your checks.

TOTAL

416.08

City Select Auto Sales Inc. v. BMW Bank of North America, Inc.



Job: 508441





BILL TO:

Credit Smarts Corporation Attn: Sean Ryan 231 East Alessandro Blvd Suite 488A Riverside, CA 92508

REMIT TO:

10465 PARK MEADOWS DRIVE SUITE 200 LONE TREE, CO 80124

TEL: (303) 299-9329 FAX: (303) 299-9309

Invoice

Terms

ACCOUNT NUMBER	DATE	INVOICE#
4041	12/9/2012	1156266

Net 30 AMOUNT QUANTITY ITEM DESCRIPTION \$204.28 Broadcast Fax Per Page Normal CREDSMAR - Date: 12/4/2012 Job: 5,107.0 BFX-25347361 Name: BMW Fax 12.03.12 - Super List Part 1 Billing Code: \$80.56 Broadcast Fax Per Page Normal CREDSMAR - Date: 12/4/2012 Job: 2,014.0 BFX-25356582 Name: Regional Fax 12.04.12 - Regional List Billing Code: \$220.68 Broadcast Fax Per Page Normal CREDSMAR - Date: 12/6/2012 Job: 5,517.0 BFX-25448786 Name: New and Improved Fax 12.6 - Super List Part 2 Billing Code: EXHIBIT

Please Include your invoice number on your checks.

TOTAL

REPORTER _ DEPONENT _ DATE _____

505.52

City Select Auto Sales Inc. v. BMW Bank of North America, Inc.



Job: 508441





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Credit Smarts Corporation Attn: Sean Ryan 231 East Alessandro Blvd Suite 488A Riverside, CA 92508

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TEL: (303) 299-9329 FAX: (303) 299-9309

Invoice

ACCOUNT NUMBER	DATE	INVOICE#	
4041	12/2/2012	1155557	

Terms Net 30

ITEM DESCRIPTION	QUANTITY	AMOUNT
Broadcast Fax Per Page Normal CREDSMAR - Date: 11/27/2012 Job: BFX-24984014 Name: Website fax 11.27.12 - Super List Part 2a Billing Code:	2,720.0	\$108.80
Broadcast Fax Per Page Normal CREDSMAR - Date: 11/29/2012 Job; BFX-25153959 Name: BMW Fax 11.29 - Super List Part 2 Billing Code;	5,480.0	\$219.20
n		

REPORTER D ANISHM
DEPONENT A GOMEZ
DATE May 19.2014

Please Include your invoice number on your checks.

TOTAL

328.00

City Select Auto Sales Inc. v. BMW Bank of North America, Inc.



Job: 508441







From:

Sean Ryan <sryan@creditsmarts.com>

Sent:

Sunday, August 11, 2013 10:14 PM

To:

Thompson Jake, SF2-US-AP-4 <Jake.Thompson@bmwfs.com>

Subject:

call?

Do you have time in the morning? The employee who sent the email out to our registered dealer list forwarded the email to me. I was out of town and did not authorize this.

What time do you have available?

Sean Ryan CreditSmarts.com 888-345-0918 ext. 307 sryan@creditsmarts.com

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REPORTER DEPONENT A G

DATE _

3-19-14 Exhibit JRB

RYAN

Patterson Reporting & Video

City Select Auto Sales Inc. v. BMW Bank of North America, Inc.



ob: 508441



From:

Sean Ryan <sryan@creditsmarts.com>

Sent:

Monday, August 12, 2013 5:23 PM

To:

Thompson Jake, SF2-US-AP-4 < Jake. Thompson@bmwfs.com>

Subject:

RE: call?

Jake,

I now know what this is all about and am terribly upset. The sales person that did this has offered his resignation which as of today and I have refused.

A friend of mine referred me to a law office that has handled things like this before.

Alan S. Kaplinsky, Esq. Partner Ballard Spahr LLP 1735 Market St. 51st Floor Philadelphia, PA 19103-7599 Phone: 215-864-8544 Cell: 215-858-7810

kaplinsky@ballardspahr.com

Turns out they also represent BMW on other circumstances and he did not want to engage unless he had your acknowledgment.

Sean Ryan CreditSmarts.com 888-345-0918 ext. 307 sryan@creditsmarts.com

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From: Jake.Thompson@bmwfs.com [mailto:Jake.Thompson@bmwfs.com]

Sent: Monday, August 12, 2013 6:53 AM

To: sryan@creditsmarts.com

Subject: RE: call?

Today is pretty crazy, how about tomorrow morning 10:30am ET?

From: Sean Ryan [mailto:sryan@creditsmarts.com]

Sent: Sunday, August 11, 2013 6:14 PM

To: Thompson Jake, SF2-US-AP-4

Subject: call?

Do you have time in the morning? The employee who sent the email out to our registered dealer list forwarded the email to me. I was out of town and did not authorize this.

What time do you have available?

REPORTER DAUSTIN
DEPONENT A GOMEZ
DATE May 19, 2014

BMWFS0000135

Sean Ryan CreditSmarts.com 888-345-0918 ext. 307 sryan@creditsmarts.com

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Version: 2013.0.3392 / Virus Database: 3211/6570 - Release Date: 08/11/13

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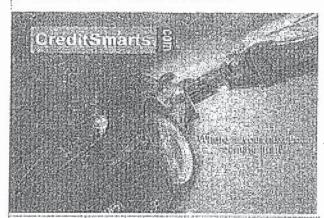
Job: 508441







Finance Newsletter





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REPORTER D Austin DEPONENT A. GIMEZ DATE Way 19. 2014

Spand it!

Follow the instructions on the loan packet, give the completed **drive check®** to the dealership to complete the purchase!



We want to finance your sales!

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ob: 508441





upzdrive is the newest division of BMW Bank of North America. backed by award-winning customer service and industry-leading online security technology.

If application status is Approved, call 888-998-2725 to inquire about the necessary documents needed for funding.

Hours: Monday-Friday 10:00 am - 6:00 pm (Eastern)

ADDITIONAL USED CAR LOAN CONDITIONS AND RESTRICTIONS

- Loan-to-Value not greater than 110% of Kelley Blue Book (KBB) Retail value. Multiply the KBB Retail value by 1.10 (or 110%). The final sale price you negotiate with the dealer cannot exceed this value.
- If the requested term is less than or equal to 60 months, vehicle must be model year 2006 or later. If the requested loan term is greater than 60 months, vehicle must be model year 2008 or later.
- Mileage cannot exceed 90,000 miles.
- May not be used at a BMW or MINI Dealership.
- No Purchases from private sellers FRANCHISED DEALERSHIPS or CREDITSMARTS MEMBER DEALERSHIPS!
- No purchase of auto leases.
- You may only purchase one vehicle with this drive check™.
- No vehicles manufactured by Suzuki, recreational vehicles, ATVs, jet skis, boats, mobile homes, motor homes, camper vans, trailers, conversion vans, commercial vehicles, business vehicles, leased vehicles, amphibious vehicles, armored vehicles, motorcycles, limousines, taxis, tow trucks, tractors, dump trucks, freight liners, farm equipment, kit cars, branded/junk/salvage/rebuilt title vehicles, grey market vehicles, lemon law vehicles, converted engine vehicles, three-wheeled vehicles, vehicles that do not have a Vehicle Identification Number (VIN) or title issued, repossessed vehicles, vehicles sold through brokers/auction houses, vehicles sold to members of the same family/same address and vehicles being sold by a business.
- No powers-of-attorney on Dealership vehicle purchases.
- No cash back to borrowers on Dealership vehicle purchases.

Spend it!

Follow the instructions on the loan packet. give the completed drive check@to the dealership to complete the purchasel

EXHIBIT

REPORTER

DEPONENT

DATE

Exhibit

CONFIDENTIAL

BMWFS0000341

City Select Auto Sales Inc. v. BMW Bank of North America, Inc.



ob: 508441







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EXHIBIT	11
REPORTER	D Austin
DEPONENT_	A Gomez
DATE	May 19.2014



City Select Auto Sales Inc. v. BMW Bank of North America, Inc.



ob: 508441



Message

From:

Murthy Pawan, SF2-US-AP-4 [/O=BMWCORP/OU=AMERICAS ADMINISTRATION

GROUP/CN=RECIPIENTS/CN=MURTHYPA]

Sent:

12/10/2012 3:42:06 PM

To: CC: Magpuri Jaime, SF2-US-AP-2 [/O=BMWCORP/OU=Americas Administration Group/cn=Recipients/cn=magpurja] Strollo Chip, SF2-US-AP-2 [/O=BMWCORP/OU=Americas Administration Group/cn=Recipients/cn=StrollCh];

Strollo Cr

Thompson Jake, SF2-US-AP-4 [/O=BMWCORP/OU=Americas Administration Group/cn=Recipients/cn=StrollCh];

Subject:

RE: Up 2 Drive IUCD Marketing Flyer

Attachments: U2D IUCD Flyer.pdf.pdf

Hi Jaime – yes we are working with credismarts. They're trying to develop a network of independents who have been providing us some good business. Of course, if they're an alphera dealers, we pay the standard flat fee.

Jake was the one who worked on this agreement (cc'd here).

Let us know if you have any questions.

P

From: Magpuri Jaime, SF2-US-AP-2

Sent: Monday, December 10, 2012 10:43 AM

To: Murthy Pawan, SF2-US-AP-4 Cc: Strollo Chip, SF2-US-AP-2

Subject: Up 2 Drive IUCD Marketing Flyer

Hi Pawan,

I ran into the attached flyer at one of my IUCDs. I called the number and it goes to a company called Credit Smart. They appear to be some sort of "middle man" between lenders and customers/dealers. Is U2D working with them?

www.creditsmarts.com

Thanks, Jaime



A Division of BMW Group Financial Services

Jaime d. Magpuri

Sales & Marketing Manager - N. California & N. Nevada

Phone: (408) 333-9547 Fax: (614) 789-7113

mailto:jaime.magpuri@alpherafs.com

Url: http://www.alpherafs.com

REPORTER

DEPONENT

May 19. 2014

City Select Auto Sales Inc. v. BMW Bank of North America, Inc.



Job: 508441







Affiliate DealerID Branch DealerNan Contact Address City State ZIP (n/a) 29071 City Select 4375 Rout Burlington NJ 8016

EXHIBIT 3

REPORTER DAUSHU

DEPONENT A-GOMEZ

DATE May 19.2014



Telephone Fax EMail (609) 877- (609) 877-

DealerTyp: Ilca Independe YearsInBus DMV

TaxID

Flooring

Flooring_T Flooring_A Flooring_C Flooring_Z Flooring_S AverageSa Login Password Microbilt_

CreateDati UpdateDat CreateUse UpdateUst rowVersio activated LoginPrefi: AffiliateID CREDIT_Tt 11/4/2011 2/15/2012 csmarts_ir csmarts_ir 1 True 0 False

DealerStat ZimpleMo: FORM_CO rate_plan setup_cosi monthly_c rate_plan_cd 2/15/2012 0

Gomez, Alejandro

City Select Auto Sales Inc. v. BMW Bank of North America, Inc.



lob: 508441

Exhibit: 00014





Credit Smarts Corporation Attn: Sean Ryan 231 East Alessandro Blvd Suite 488A Riverside, CA 92508

REMIT TO:

10465 PARK MEADOWS DRIVE SUITE 200 LONE TREE, CO 80124

TEL: (303) 299-9329 FAX: (303) 299-9309

Invoice

ACCOUNT NUMBER	DATE	INVOICE#
4041	1/27/2013	1160534

Terms Net 30 **AMOUNT** QUANTITY ITEM DESCRIPTION 5,353.0 \$214.12 Broadcast Fax Per Page Normal CREDSMAR - Date: 1/22/2013 Job: BFX-27052308 Name: Nationwide Fax 01.22.13 - Super List Part 2 Billing Code: \$107.68 2,692.0 Broadcast Fax Per Page Normal CREDSMAR - Date: 1/23/2013 Job: BFX-27102608 Name: Nationwide Fax 1.23.13 - Super List Part 1a Billing Code: \$94.88 2,372.0 Broadcast Fax Per Page Normal CREDSMAR - Date: 1/25/2013 Job: BFX-27224035 Name: Nationwide Fax 1.25.13 - Super List Part 1b Billing Code: EXHIBIT REPORTER_ DEPONENT

Please Include your invoice number on your checks.

TOTAL

416.68

Questions? Please contact accounting@westfax.com for support.

Pg. 1



Credit Smarts Corporation Attn: Sean Ryan 231 East Alessandro Blvd Suite 488A Riverside, CA 92508

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10465 PARK MEADOWS DRIVE SUITE 200 LONE TREE, CO 80124

TEL: (303) 299-9329 FAX: (303) 299-9309

Invoice

Terms

ACCOUNT NUMBER	DATE	INVOICE #
4041	1/20/2013	1159840

Net 30 **AMOUNT** QUANTITY ITEM DESCRIPTION \$107.60 2,690.0 Broadcast Fax Per Page Normal CREDSMAR - Date: 1/14/2013 Job: BFX-26689183 Name: Nationwide fax 1.14.13 - Super List Part 2b Billing Code: \$107.96 2.699.0 Broadcast Fax Per Page Normal CREDSMAR - Date: 1/16/2013 Job: BFX-26834766 Name: Nationwide 1.16.13 - Super List Part 1a Billing Code: \$95.40 2,385.0 Broadcast Fax Per Page Normal CREDSMAR - Date: 1/18/2013 Job: BFX-26946227 Name: Nationwide 1.18.13 - Super List Part 1b Billing Code:

Please Include your invoice number on your checks.

TOTAL

310.96

Questions? Please contact accounting@westfax.com for support.

Pg. 1



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REMIT TO:

10465 PARK MEADOWS DRIVE SUITE 200 LONE TREE, CO 80124

TEL: (303) 299-9329 FAX: (303) 299-9309

Invoice

ACCOUNT NUMBER	DATE	INVOICE #	
4041	1/13/2013	1159161	

Terms Net 30 **AMOUNT** QUANTITY \$0.04 1.0

	110 00
1.0	\$0.04
2,698.0	\$107.92
2,397.0	\$95.88
2,618.0	\$104.72
	2,397.0

Please Include your invoice number on your checks.

ITEM DESCRIPTION

TOTAL

308.56

Questions? Please contact accounting@westfax.com for support.

Pg. 1



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REMIT TO:

10465 PARK MEADOWS DRIVE SUITE 200 LONE TREE, CO 80124

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Invoice

Terms

ACCOUNT NUMBER	DATE	INVOICE #
4041	12/30/2012	1157764

Net 30 **AMOUNT** QUANTITY ITEM DESCRIPTION \$416.08 10,402.0 Broadcast Fax Per Page Normal CREDSMAR - Date: 12/27/2012 Job: BFX-26095188 Name: BMW Fax 12.27.12 - Super List Billing Code:

Please Include your invoice number on your checks.

TOTAL



Credit Smarts Corporation Attn: Sean Ryan 231 East Alessandro Blvd Suite 488A Riverside, CA 92508

REMIT TO:

10465 PARK MEADOWS DRIVE SUITE 200 LONE TREE, CO 80124

TEL: (303) 299-9329 FAX: (303) 299-9309

Invoice

ACCOUNT NUMBER	DATE	INVOICE #
4041	12/23/2012	1157517

Terms
Net 30

ITEM DESCRIPTION	QUANTITY	AMOUNT
Broadcast Fax Per Page Normal CREDSMAR - Date: 12/17/2012 Job: BFX-25806549 Name: More Sales 12.17.12 - Super List Part 1a Billing Code:	2,693.0	\$107.72
Broadcast Fax Per Page Normal CREDSMAR - Date: 12/18/2012 Job: BFX-25852050 Name: More Sales Fax 12.18.12 - Super List Part 1b Billing Code:	2,427.0	\$97.08
Broadcast Fax Per Page Normal CREDSMAR - Date: 12/19/2012 Job: BFX-25916121 Name: 2.99 Nationwide 12.19 - Super List Part 2a Billing Code:	2,659.0	\$106.36

Please Include your invoice number on your checks.

TOTAL



Credit Smarts Corporation Attn: Sean Ryan 231 East Alessandro Blvd Suite 488A Riverside, CA 92508

REMIT TO:

10465 PARK MEADOWS DRIVE SUITE 200 LONE TREE, CO 80124

TEL: (303) 299-9329 FAX: (303) 299-9309

Invoice

Terms

ACCOUNT NUMBER	DATE	INVOICE #
4041	12/16/2012	1156893

Net 30 **AMOUNT** QUANTITY ITEM DESCRIPTION \$0.04 Broadcast Fax Per Page Normal CREDSMAR - Date: 12/11/2012 Job: BFX-25596457 Name: NationWide 12.11.12 - Test Billing Code: \$206.04 Broadcast Fax Per Page Normal CREDSMAR - Date: 12/11/2012 Job: 5,151.0 BFX-25597372 Name: NationWide 12.11.12 - Super List Part 1 Billing \$105.68 Broadcast Fax Per Page Normal CREDSMAR - Date: 12/12/2012 Job: 2,642.0 BFX-25648952 Name: Nationwide Fax 12.12.12 - Super List Part 2 Billing Code: \$111.52 2,788.0 Broadcast Fax Per Page Normal CREDSMAR - Date: 12/13/2012 Job: BFX-25693605 Name: Nationwide Fax 12.13.12 - Super List Part 2b Billing Code:

Please Include your invoice number on your checks.

TOTAL



Credit Smarts Corporation Attn: Sean Ryan 231 East Alessandro Blvd Suite 488A Riverside, CA 92508

REMIT TO:

10465 PARK MEADOWS DRIVE SUITE 200 LONE TREE, CO 80124

TEL: (303) 299-9329 FAX: (303) 299-9309

Invoice

ACCOUNT NUMBER	DATE	INVOICE#	
4041	12/2/2012	1155557	

Terms Net 30

08.80
219.20

Please Include your invoice number on your checks.

TOTAL



Credit Smarts Corporation Attn: Sean Ryan 231 East Alessandro Blvd Suite 488A Riverside, CA 92508

REMIT TO:

10465 PARK MEADOWS DRIVE SUITE 200 LONE TREE, CO 80124

TEL: (303) 299-9329 FAX: (303) 299-9309

Invoice

ACCOUNT NUMBER	DATE	INVOICE #
4041	11/25/2012	1154575

Terms Net 30

ITEM DESCRIPTION	QUANTITY	AMOUNT
Broadcast Fax Per Page Normal CREDSMAR - Date: 11/20/2012 Job: BFX-24796092 Name: Turkey Fax 11.20 - Super List Part 1 Billing	5,298.0	\$211.92
Code:		

Please Include your invoice number on your checks.

TOTAL



Credit Smarts Corporation Attn: Sean Ryan 231 East Alessandro Blvd Suite 488A Riverside, CA 92508

REMIT TO:

10465 PARK MEADOWS DRIVE SUITE 200 LONE TREE, CO 80124

TEL: (303) 299-9329 FAX: (303) 299-9309

Invoice

ACCOUNT NUMBER	DATE	INVOICE #
4041	12/9/2012	1156266

Terms Net 30

QUANTITY	AMOUNT
5,107.0	\$204.28
2,014.0	\$80.56
5,517.0	\$220.68
	2,014.0

Please Include your invoice number on your checks.

TOTAL



Credit Smarts Corporation Attn: Sean Ryan 231 East Alessandro Blvd Suite 488A Riverside, CA 92508

REMIT TO:

10465 PARK MEADOWS DRIVE SUITE 200 LONE TREE, CO 80124

TEL: (303) 299-9329 FAX: (303) 299-9309

Invoice

ACCOUNT NUMBER	DATE	INVOICE #
4041	11/18/2012	1154214

Terms Net 30

Stroadcast Fax Per Page Normal CREDSMAR - Date: 11/12/2012 Job: BFX-24443602 Name: Edocs 11.12.12 - Super List Part 1a Billing Code: Stroadcast Fax Per Page Normal CREDSMAR - Date: 11/12/2012 Job: BFX-24445828 Name: Edocs 11.12.12 - Super List 1a Billing Code: Stroadcast Fax Per Page Normal CREDSMAR - Date: 11/13/2012 Job: BFX-24507464 Name: Edocs 11.13.12 - Super List Part 1b Billing Code: Stroadcast Fax Per Page Normal CREDSMAR - Date: 11/13/2012 Job: BFX-24507464 Name: Edocs 11.13.12 - Super List Part 1b Billing Code: Stroadcast Fax Per Page Normal CREDSMAR - Date: 11/15/2012 Job: BFX-24622278 Name: Regional FAX part1 - Test Billing Code: Stroadcast Fax Per Page Normal CREDSMAR - Date: 11/15/2012 Job: BFX-24622327 Name: Regional FAX part1 - Reg Super Part 1 Billing Code: Stroadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: BFX-24689911 Name: Regional Fax 11.16.12 - Regional Super List Part 2 Billing Code: Stroadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: BFX-24689911 Name: Regional Fax 11.16.12 - Regional Super List Part 2 Billing Code: Stroadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: BFX-24689911 Name: Regional Fax 11.16.12 - Regional Super List Part 2 Billing Code: Stroadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: BFX-24689911 Name: Regional Fax 11.16.12 - Regional Super List Part 2 Billing Code: Stroadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: BFX-24689911 Name: Regional Fax 11.16.12 - Regional Super List Part 2 Billing Code: Stroadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: BFX-24689911 Name: Regional Fax 11.16.12 - Regional Super List Part 2 Billing Code: Stroadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: BFX-24689911 Name: Regional Fax 11.16.12 - Regional Super List Part 2 Billing Code: Stroadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: BFX-24689911 Name: Regional Fax 11.16.12 - Regional Super List Part 2 Billing Code: Stroadcast Fax Per Page Normal CREDSMAR - Date:	ITEM DESCRIPTION	QUANTITY	AMOUNT
Broadcast Fax Per Page Normal CREDSMAR - Date: 11/12/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/13/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/13/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/15/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/15/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/15/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/15/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/15/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/15/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job:	Broadcast Fax Per Page Normal CREDSMAR - Date: 11/12/2012 Job: BFX-24443602 Name: Edocs 11.12.12 - Super List Part 1a Billing	2,803.0	\$112.12
Broadcast Fax Per Page Normal CREDSMAR - Date: 11/15/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/15/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/15/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/15/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/15/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/15/2012 Job: BrX-24622327 Name: Regional FAX part1 - Reg Super Part 1 Billing Code: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job:	Broadcast Fax Per Page Normal CREDSMAR - Date: 11/12/2012 Job: BFX-24445828 Name: Edocs 11.12.12 - Super List 1a Billing Code:	2,802.0	\$112.08
Brx-24622278 Name: Regional FAX part1 - Test Billing Code: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/15/2012 Job: 1,154.0 \$46.16 BFX-24622327 Name: Regional FAX part1 - Reg Super Part 1 Billing Code: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: 855.0 \$34.20 BFX-24689911 Name: Regional Fax 11.16.12 - Regional Super List Part	BFX-24507464 Name: Edocs 11.13.12 - Super List Part 1b Billing	2,521.0	\$100.84
Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 366. Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: Broadcast Fax Per Page Normal CREDSMAR - Date: 11/16/2012 Job: 855.0 \$34.20	Broadcast Fax Per Page Normal CREDSMAR - Date: 11/15/2012 Job: BFX-24622278 Name: Regional FAX part1 - Test Billing Code:	1.0	\$0.04
BFX-24689911 Name: Regional Fax 11.16.12 - Regional Super List Part	BFX-24622327 Name: Regional FAX part1 - Reg Super Part 1 Billing	1,154.0	\$46.16
	BFX-24689911 Name: Regional Fax 11.16.12 - Regional Super List Part	855.0	\$34.20

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TOTAL



Credit Smarts Corporation Attn: Sean Ryan 231 East Alessandro Blvd Suite 488A Riverside, CA 92508

REMIT TO:

10465 PARK MEADOWS DRIVE SUITE 200 LONE TREE, CO 80124

TEL: (303) 299-9329 FAX: (303) 299-9309

Invoice

ACCOUNT NUMBER	DATE	INVOICE #
4041	11/11/2012	1153553

Terms Net 30 **AMOUNT**

ITEM DESCRIPTION	QUANTITY	AMOUNT
Broadcast Fax Per Page Normal CREDSMAR - Date: 11/5/2012 Job: BFX-24214246 Name: Patriot Fax 11.06.12 - Test Billing Code:	1.0	\$0.04
Broadcast Fax Per Page Normal CREDSMAR - Date: 11/6/2012 Job: BFX-24227803 Name: Patriot Fax 11.06.12 - Hurricane part 1 Billing Code:	3,234.0	\$129.36
Broadcast Fax Per Page Normal CREDSMAR - Date: 11/7/2012 Job: BFX-24295410 Name: Patriot Fax 11.07.12 - Hurricane List 2 Billing Code:	3,208.0	\$128.32
Broadcast Fax Per Page Normal CREDSMAR - Date: 11/8/2012 Job: BFX-24341458 Name: Patriot Fax 11.08.12 - Hurricane Part 3 Billing Code:	3,938.0	\$157.52
Broadcast Fax Per Page Normal CREDSMAR - Date: 11/9/2012 Job: BFX-24417781 Name: Edocs 11.12.12 - Super List 1a - Test Billing Code:	1.0	\$0.04

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TOTAL



Credit Smarts Corporation Attn: Sean Ryan 231 East Alessandro Blvd Suite 488A Riverside, CA 92508

REMIT TO:

10465 PARK MEADOWS DRIVE SUITE 200 LONE TREE, CO 80124

TEL: (303) 299-9329 FAX: (303) 299-9309

Invoice

Terms

ACCOUNT NUMBER	DATE	INVOICE#
4041	11/4/2012	1152873

Net 30 **AMOUNT** QUANTITY ITEM DESCRIPTION \$0.04 Broadcast Fax Per Page Normal CREDSMAR - Date: 10/30/2012 Job: BFX-24017522 Name: Compliance Fax - Test Billing Code: \$132.44 3,311.0 Broadcast Fax Per Page Normal CREDSMAR - Date: 10/30/2012 Job: BFX-24018249 Name: Compliance Fax - Hurricane 1 Billing Code: Broadcast Fax Per Page Normal CREDSMAR - Date: 10/30/2012 Job: 1.0 \$0.04 BFX-24034557 Name: Compliance Fax - Test Billing Code: \$129.88 Broadcast Fax Per Page Normal CREDSMAR - Date: 10/31/2012 Job: 3,247.0 BFX-24056626 Name: Compliance Fax - Hurricane 2 Billing Code: 3,832.0 \$153.28 Broadcast Fax Per Page Normal CREDSMAR - Date: 11/1/2012 Job: BFX-24099651 Name: Compliance Fax - Hurricane 3 Billing Code: \$0.04 Broadcast Fax Per Page Normal CREDSMAR - Date: 11/2/2012 Job: 1.0 BFX-24143562 Name: Matadors Fax - Test Billing Code: \$15.08 377.0 Broadcast Fax Per Page Normal CREDSMAR - Date: 11/2/2012 Job: BFX-24144024 Name: Matadors Fax - Ca CU Fax Billing Code:

Please Include your invoice number on your checks.

TOTAL

Gomez, Alejandro

City Select Auto Sales Inc. v. BMW Bank of North America, Inc.



lob: 508441

Exhibit: 00015



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	J
EX	нівіт /5
RE DE	PORTER DAUSTIN PONENT A-GOMEZ TE May 19, 2014
DA'	TEMay 19, 2014